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Towards a Better Teacher Bargaining Model in British Columbia

Report to Honourable Graham Bruce On the Teacher Collective Bargaining

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I INTRODUCTION

The origin of this report was the Education Services Collective Agreement Act, passed in January 2002. Section 5 of that Act provided for the establishment of a commission to make recommendations as to how the collective bargaining of teachers' contracts in British Columbia could be improved. Section 5 is reprinted as Appendix A of this report.

The Minister of Skills Development and Labour, Honourable Graham Bruce, determined that it would be useful to receive some advice prior to establishing the commission. In particular, he requested that:

- consultations occur with the current parties to teacher collective bargaining, as well as other key K - 12 education stakeholders, seeking their recommendations;

- the recent history of teacher collective bargaining in BC, as well as in other jurisdictions be reviewed; and

- a set of draft terms of reference for the commission be developed.

I was asked to take on this project, and this is the report of my findings, analysis and recommendations.

The structure of the main body of the report is as follows:

- Section II briefly outlines how I went about my task;
- Section III provides a summary of the history of teacher collective bargaining over the past two decades;
- Section IV summarizes what I heard from the parties and key stakeholders;
- Section V considers questions concerning the funding of public education;
- Section VI considers issues surrounding collective bargaining in the education sector;
- Section VII provides my recommendations to the Minister;
- Finally, Section VIII provides my concluding comments.

II HOW I WENT ABOUT MY TASK

In the time available for my task, it was not possible to throw my consultation net too widely. Accordingly, I focussed on what I thought would be the key parties and stakeholders. I sent letters inviting input from each of the following organizations:

- British Columbia Teachers' Federation (BCTF)
- British Columbia School Trustees Association (BCSTA)
- British Columbia Public School Employers' Association (BCPSEA)
- British Columbia Confederation of Parent Advisory Councils (BCCPAC)
- British Columbia School Superintendents Association (BCSSA)
- British Columbia Principals' and Vice-Principals' Association (BCPVPA)
- British Columbia School District Secretary Treasurers' Association (BCSDSTA)
- Canadian Union of Public Employees (CUPE) BC.

A number of those groups provided written input, copies of which are provided in Appendix B. I also met with representatives of a number of those groups for face-to-face discussions, in some cases several times.

In addition to these groups, I benefited from discussions with representatives from organized labour and business, as well as other educators and labour-relations practitioners.

Within government, I consulted with the Ministry of Education and received background information from the Ministry of Skills Development and Labour.

Additional reference material was recommended to me by several of the organizations I consulted, and I have compiled a list of the most useful pieces in Appendix C.

After gathering all of this input, I tried to distil the essence of what I had heard, sift through the recommendations and identify what I believe to be the root causes of the extraordinary stresses in teacher collective bargaining in British Columbia. This provides the analytical basis for my recommended terms of reference for the commission.

III THE HISTORY OF TEACHER COLLECTIVE BARGAINING IN BRITISH COLUMBIA

Given the very different positions adopted by the parties to teacher collective bargaining, it is not surprising there will be different interpretations of history.

The following provides my best attempt at an “objective” summary of the essential elements of this history over the past two decades. I have placed "objective" in quotation marks because I recognize there is inevitably an element of subjectivity in any history. The several papers published by the BCTF listed in Appendix C are useful references to understand the view of history held by that organization, and the papers published by BCPSEA provide the equivalent from the employers’ side.

Prior to 1987 teachers did not have the right to strike. Teachers did bargain collectively with their local school boards, but the scope of issues bargained was limited - generally focussed on compensation issues. Binding arbitration was used in the event of an inability to reach an agreement.

In 1987 the provincial government brought in legislation allowing teachers full collective bargaining with the right to strike. It should be noted that the BCSTA supported the extension of organization and collective bargaining rights to teachers in 1987. One of the reasons for this support was unhappiness with binding arbitration as a dispute settlement mechanism. The BCTF was successful in certifying local teacher associations in every school district in the province.

Between 1987 and 1993 there were three rounds of collective bargaining in British Columbia. The bargaining occurred at the school district level, although the BCTF co-ordinated strategy at the provincial level. The degree of co-ordination at the school board level was much less consistent and comprehensive.

The BCTF's general view of this bargaining structure was positive. While they admitted to some problems, their position was that these were generally transitional problems arising from the need for both sides to develop a mature understanding of the process and the change in relationships resulting from the move to full collective bargaining with the right to strike.

The view of trustees and school board management was generally less favourable. There was a general feeling of unequal bargaining power - that the highly co-ordinated approach taken by the BCTF resulted in the school boards being "whipsawed" - resulting in an escalation of costs considerably in excess of the rate of inflation.

It has been suggested that school boards could have done a better job at taking a co-ordinated and unified approach to the BCTF. This may well be true. Even if the school boards had done a better job, it is questionable whether they could ever have fully matched the discipline of the BCTF. School boards are accountable to their local publics, and this means that the province-wide implications of precedents they agree to in local settlements are not relevant in their decision making. In contrast, the purpose of a disciplined provincial teachers' organization is to advance a province-wide teachers' agenda. Certainly the anecdotal evidence from the 1987-93 period is replete with evidence of such an asymmetrical relationship.

Whether or not the school boards could have done a better job of taking a unified and co-ordinated approach to the BCTF, school boards generally believed themselves to be in an unequal bargaining relationship. As one individual portrayed it to me: "It was like the local pick-up team (the school board) playing the travelling all stars (the BCTF). Guess who won every game?"

Over the course of these three rounds of bargaining there were a number of strikes/lockouts at the school district level.[1] The BCTF has articulated the position that the fact the strikes tended to be of short duration, and occurred in a minority of school districts (approximately 20%) in each round, indicated the right to strike in the context of bargaining at the district level was not overly disruptive, and this model of collective bargaining worked fairly well.

The perception from the employers' side was somewhat at variance with this. The fact that strikes tended to be short in duration is said to indicate the public's unwillingness to accept any but the most minor of disruptions in the school year, and underlined an unequal bargaining position between the local school board and the BCTF.

In 1991 a new provincial government was elected in British Columbia. Early on in its mandate it established a Commission of Inquiry into the Public Service and Public Sector (the Korbin Commission). Labour relations in the K-12 system were among the issues examined by the Korbin Commission. The BCTF submission to the Commission, entitled "Face to Face", argued for a continuation of collective bargaining at the school district level. Employers, on the other hand, expressed serious concerns about continuing on with that structure unchanged. It is worth quoting the Commission's summary of what it heard in this regard:

> "The Commission also received numerous submissions concerning the need to establish a method of balancing the power of the parties for collective bargaining purposes. Put another way, there is a perception of a power imbalance. It is believed by many that there are powerful local teachers' associations acting in concert with a more powerful central teachers' federation, whipsawing individual school boards into accepting teachers' bargaining demands because, on a district-by-district basis, they are not able to resist those demands. Consequently it is perceived that school boards are forced to agree to teachers' settlements beyond the funding ability of a particular district."[2]

While employers were unhappy with the local collective bargaining model, they were not generally prepared to go completely to the other extreme of a totally centralized model. The BCSTA argued for a "three-tiered" structure. There would be a "precontracting conference" involving the provincial government, school boards and teachers at which broad issues of education policy, regulation and funding would be discussed and resolved. There would be provincial bargaining of "terms and conditions of employment which have a predominantly provincial impact and are not governed by regulation." The third tier would be local bargaining of "terms and conditions of employment which have a predominantly local impact and are not governed by provincial contracting or regulation."

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[1] A summary of the strikes lockouts is provided in BCPSEA's discussion paper, April 2001,

[2] Korbin, Volume Two, Final Report, F-20.

While the Korbin Commission was compiling its recommendations in the spring of 1993, there were a number of strikes in school districts. One of these strikes - in Vancouver - led the provincial government to bring in legislation bringing it to an end.

In June 1993 the Korbin Commission released its final report which recommended that public sector bargaining generally be brought under a greater degree of central co-ordination and control. In July 1993 the Public Sector Employers Act was passed, establishing a Public Sector Employers Council (PSEC) and employers' associations in each public sector, including the K-12 public school system. In June 1994 the Public Education Labour Relations Act was passed, establishing BCPSEA as the accredited bargaining agent for all public school boards and the BCTF as the certified bargaining agent for all public school teachers.

BCPSEA has a Board of Directors that consists of nine school trustees elected by representatives from the sixty public school boards and four representatives of the provincial government. The Chair and the Vice-Chair are school trustees. In addition, there is a non-voting representative from each of the BC School Superintendent's Association and the BC School District Secretary Treasurer's Association. BCPSEA gets its mandate from two sources – the school boards through the trustee representatives, and the provincial government through its representatives and through PSEC. The potential ambiguity of where BCPSEA gets its mandate would be a challenge for it. Is BCPSEA primarily accountable to school boards, or is it primarily accountable to the provincial government?

The Public Education Labour Relations Act required that the parties negotiate which matters should be subject to province-wide negotiating and which matters should be dealt with at the local table. In practice over the next eight years, no local bargaining ever occurred.

The establishment of BCPSEA and province-wide bargaining was strongly opposed by the BCTF at the time. In fact, I was told by the Federation that a number of teachers who were "long-time members of the NDP tore up their party cards in protest." The BCTF opposition remains to this day, and is reflected in their submission.

Whether or not the prescription of province-wide bargaining between the BCTF and BCPSEA was the right thing to do, it is significant that the government of the day chose to do so. That a government which had received significant support from teachers in the previous election chose to proceed over the objections of the BCTF speaks to elements which transcend partisan positions, left-right labels, and pro-labour versus pro-management sympathies. There is something about the reality of providing public education, and what the public expects of its government, that exerts a powerful influence on how any government behaves.

For a variety of reasons, province-wide bargaining between the BCTF and BCPSEA over the past eight years has been unsuccessful in reaching a comprehensive contract. In April 1996, after a year of negotiations that bore little fruit, the provincial government passed the Education and Health Collective Bargaining Assistance Act, which ensured there would be no labour disruption during the imminent provincial election. The provincial government then drove a Transitional Collective Agreement (TCA), which increased teacher salaries by a modest amount, rolled over the existing language in each of the local collective agreements in place and added some minor provisions on a province-wide basis. The TCA was ratified by both sides, although, in the case of school boards, just barely.

The TCA expired on June 30, 1998. Negotiations to replace it began in 1997. By early 1998 little progress had been made. The provincial government then in essence went around BCPSEA and negotiated directly with the BCTF. In general terms, the BCTF agreed to limited wage increases (two years of 0 percent increase followed by 2 percent in the final year) in exchange for reduced class sizes at the K-3 level, required ratios of non-enrolling teachers in each district, and maintenance of all the other existing terms in each school district.

School boards were extremely unhappy with this agreement, partly for process reasons, partly for content reasons. School boards overwhelmingly turned it down, forcing the provincial government to legislate the agreement through the Public Education Agreement Act.

That agreement expired on June 30, 2001. Bargaining began in March 2001 for a replacement agreement. Suffice it to say there was a large gulf between the position of the BCTF and that of BCPSEA. The most obvious gulf was between the cost of the BCTF proposal and the incremental dollars in BCPSEA's mandate, but there were also underlying philosophical differences. This gulf was not narrowed by the election of a new government in May 2001.

In the fall of 2001 teachers began a series of escalating work actions. These actions played out in the context of the designation of education as an essential service under Section 72 of the British Columbia Labour Relation Code, which had been put in with the Skills Development and Labour Statutes Amendment Act in August 2001.

The government legislated a new collective agreement through the Education Services Collective Agreement Act in January of 2002 after it had concluded that a negotiated settlement was not possible in a timely way. This Act provided for three annual wage increases of 2.5 percent and, in conjunction with the Public Education Flexibility and Choice Act, removed provisions in existing contracts with respect to class size, workload/staffing ratios, and made other changes.

The BCTF views these two pieces of legislation as draconian exercises in "contract stripping". School boards have a more mixed view. On the one hand, many viewed positively the increased flexibility to make the most educationally effective use of the funds available to them. On the other hand, there are concerns about the effect of the imposed agreement on teacher motivation and morale. Further, school boards expressed concern that the costs of the second and third year of the teacher's salary increase have not been fully matched in increased funding from the province.

In summary, the past sixteen years of teacher collective bargaining have not resulted in a happy legacy. One individual who had participated in several rounds of collective bargaining put a point on this by telling me "nobody does it as badly as we do." No party seems to believe that the existing structure, unchanged, can lead to successful collective bargaining in the future.

IV WHAT I HEARD FROM THE PARTIES AND OTHER STAKEHOLDERS

In Section II above reference was made to "the extraordinary stresses in teacher collective bargaining." The key word is extraordinary. Collective bargaining is an inherently stressful process. It structures an adversarial relationship that is driven by the threat of each side to inflict harm upon the other if a settlement cannot be reached. Nonetheless, society accepts collective bargaining as a useful institution which, when functioning well, equalizes bargaining power between employer and employee and, paradoxically, can transform a situation where interests of the two partners are in opposition to one where interests are aligned.

My consultations have confirmed that the historical developments described above have led to an extraordinary level of stress in teacher collective bargaining in British Columbia. Indeed, many might find that to be a gross understatement of the situation.

That extraordinary stress manifests itself in damaged relationships amongst the key parties and stakeholders, and very different proposals as to how to improve the situation. I believe it is best to let the various parties and stakeholders speak for themselves, so Appendix B provides the complete written submissions provided to me. In the following subsections I will summarize the essence of what I gathered from those submissions as well as from conversations with a number of representatives of the organizations.

1 Relationships in the K-12 System

Not one party I heard from was happy with the state of relationships in the K-12 system within the context of teacher collective bargaining.

The BCTF is clearly angry with the provincial government for designating education an essential service under Section 72 of the British Columbia Labour Relations Code and for legislating a contract in January 2002 that it found to be unacceptable. Further, the BCTF believes the establishment of BCPSEA as the designated bargaining agent for employers in 1994 was a mistake and makes it clear it is unhappy with the role BCPSEA has played and continues to play. It believes the provincial government is not providing adequate funding for the system.

For its part, the provincial government believes that the BCTF's position in the 2001/02 collective bargaining round was detached from the economic and fiscal reality facing the province.

The BCSTA articulates a more nuanced critique of the situation, which may reflect the reality that school boards are accountable for both the success of their schools and responsible fiscal management of their budgets. Nonetheless, it is clear that trustees see several problems with the current situation - blurred accountability, dysfunctional collective bargaining, and the risk that the situation could lead to a demoralized, de-motivated teaching force. While not stating so explicitly, the BCSTA brief implies frustration with being the "meat in the sandwich" between the provincial government and teachers, and the resulting strain on the relationship between school boards and both of those parties.

Both the BCTF and BCSTA have questioned whether BCPSEA can objectively comment on its own structure and the government role in collective bargaining. I found, however, BCPSEA to be frank, albeit careful, in analyzing the situation. In addition to its brief, BCPSEA has written a series of discussion papers that are referenced in Appendix C. In those discussion papers, it is quite clear that BCPSEA thinks there are serious problems with the way teacher collective bargaining has been conducted in British Columbia, and is open to an in-depth consideration of systemic improvements.

Additional submissions were provided by the BC Confederation of Parent Advisory Councils (BCCPAC), the BC Principals' and Vice-Principals' Association (BCPVPA), and jointly by the BC School Superintendents Association (BCSSA) and the BC School District Secretary-Treasurers' Association (BCSDSTA). The BCCPAC expresses concerns about the impact of negotiations and disruptions on the service and atmosphere in the schools, as well as the impact of collective agreements on parents' voices in the system. The BCPVPA expresses concerns about the "negative impact on the culture of schools that eventually hinders our ability to serve students" arising from the ongoing conflict. The joint brief of the BCSSA and BCSDSTA does not comment on the state of relationships within the K-12 system, but focuses exclusively on recommendations for the terms of reference of the commission to be established.

In summary then, it is clear that the overall state of relationships in the K-12 system has been very negatively impacted by the history of collective bargaining in British Columbia. I do not believe it is particularly fruitful to opine as to "who is to blame" for this state. The behaviours of, and decisions made by, the various parties over the past two decades were reasonable in the context in which they occurred. All of the parties have been motivated by an understandable mixture of commitment to the public education system, self-interest, and differing views about how the world does and should work. The fact that we would have desired a happier history does not push me to determine whose fault that was. Rather it tells me we should determine how to restructure our approach so that the "future history" is happier than what we know right now.

2 Anxieties About What This Means in Schools

Many of the people I talked to raised anxieties about what they felt is the most significant cost of all of this. It was not the time lost to strikes, and it is not the time and money spent on negotiations. Rather it is, at the risk of sounding overly mystical, the diminishment of the magic that happens in the classroom and in the school.

Teaching is a profession. Indeed, I would suggest it is a moral profession that is a calling. Schools are not factories. There are all kinds of intangible factors that make for a successful school – collegial relationships amongst staff, and between staff and management; the freedom for professional judgement to be used in deciding how best to teach particular classes and individual students; teachers believing they are respected and supported; positive relations between home and school; and so on. This is all put at risk when labour conflict is brought into the school, when relationships and professional issues are overly rule-based, when the division between management and staff in the school becomes too stark, when teachers begin to doubt how well they are supported, and when students and families are brought into the disputes between management and staff.

If the conflict is relatively infrequent and of short duration, and if the reliance on rules is kept to what reasonably is required to balance amongst fairness, motivation and excellence, the magic will remain undiminished. I sense, however, a growing anxiety amongst members from all components of the K-12 community that things have been too chronic for too long, and that the magic is at risk.

3 Recommendations for Moving Forward

All of the representations I received agreed on the need to change the current structure. Beyond that the consensus breaks down.

The BCTF is clearest in their desired reform. In general terms, they would like to see a return to the full right to strike, full scope bargaining at the school district level, with school districts given taxation authority to fund "richer" collective agreements if the local teachers association is successful in achieving those at the bargaining table. Understandably then, its recommendation is that the terms of reference of the commission should be broad enough to at least be permissive of such an ultimate conclusion. In addition, the BCTF, alone amongst the groups providing input, made an explicit recommendation about the composition of the commission.

The other parties and stakeholders were less categorical about what changes would be beneficial. No organization echoed the BCTF preference for a return to the 1987-93 scenario. But beyond that, the recommendations tended to be more of the nature of factors to be taken into consideration or questions to be asked/answered by the commission.

Several themes emerged from these recommendations. First, there is no simple answer. The commission needs to take into account that there are a number of dimensions to the problem - e.g. bargaining structure, scope, dispute settlement, accountability - that interact in complex ways. Solutions to the problem that focus primarily on one of the dimensions are likely to result in unintended, unhappy consequences. Indeed, the argument was often, at least implicitly, advanced that the unhappy history of the past is the result of a sequence of deceptively simple solutions that had exactly such unintended, unhappy consequences - binding arbitration, full scope collective bargaining, province-wide bargaining, essential services designation, etc. Because none of these "fixes" was thought through in the context of the full complexity of the problem, the results were disappointing at best.

The second theme, related to the first, is that the commission should pay particular attention to the British Columbia reality that is a legacy of our history. While there is value in examining different approaches used elsewhere in the world, it should always be kept in mind that what works elsewhere might not work here.

A third theme that I came across consistently, albeit described somewhat differently by different organizations, was the need for an alignment of responsibility, accountability and authority.

The final theme was that, through it all, we should not lose sight of the basic goal - a quality education for our children. Some might think this is merely obligatory dressing up of each organization's self-interested position. I believe, however, that, notwithstanding all the differences amongst the parties and stakeholders, there is a genuine commitment of all to this calling.

Beyond these four themes, most organizations have the same general set of questions that they believe the commission has to grapple with:

- Who should bargain what?
- What should be bargained by whom?
- How should disputes be settled?

The apparent redundancy between the first two points is apparent only. The set of issues to be dealt with is complex, and allowance needs to be made for the possibility that different elements will be negotiated at different levels.

There were different approaches to subdividing and repackaging them, but these three questions were the essence of every list submitted to me.

These three basic questions also represent three potential dividing lines between the parties. On the question of who should bargain, as indicated above, the BCTF takes the position that it should be local school boards and local teacher associations. While other organizations have not coalesced on a definitive alternative to local bargaining, there is a general view that there is a need for some provincial agent for bargaining at least the major cost elements of the collective agreement.

In terms of what should be bargained, the BCTF is again the clearest - it would like no restriction on the scope of issues to be determined at the collective bargaining table. Some other groups believe that there are some issues that should be established as "educational policy" by the province in consultation with parties and key stakeholders.

The question of dispute resolution is also clearly contentious. The BCTF believes strongly that the ability to strike is a fundamental right and is the best lever to precipitate agreement at the bargaining table. It also believes that education should not be deemed an essential service, and that the disruption and hardship brought on by the occasional strike is not excessive in the total scheme of things. In other words, while it does not deny that there are costs associated with strikes, in its opinion the long run benefits of the right to strike exceed those costs.

Other parties and stakeholders have greater or lesser concerns about an unqualified right to strike. Some of the submissions seem to imply a preference for an outright ban. Others struggle with an attempt to balance fairness to teachers with fairness to students and their parents. In this regard, I think it is informative to cite three passages from the submission I received from the BCSTA:

> "In 1987, BCSTA supported the extension of organization and collective bargaining rights to teachers. We do not believe trustees would see removal of these rights as fair."
>
> "Many trustees supported the introduction of essential services legislation that has limited the right to strike in the education sector."
>
> "School trustees are well aware that strikes are not the worst thing that can happen to a school system... A demoralized, de-motivated teaching force is one of the worst things that can happen."

Those three passages capture the tension that exists between the two competing arguments.

In addition to the dividing lines that the three basic questions expose, there remains one other major source of tension - the level of funding provided for the K-12 sector. The BCTF makes no secret of its belief that the basic problem facing the K-12 system is what it believes to be a chronic underfunding of the system. The implication is that a good deal of the problems over collective bargaining would go away if only there was an "adequate" level of funding provided. I believe it is fair to say that the other organizations would be happier with an increased level of funding for the K-12 system.

While the dividing lines arising from the three questions discussed above run between the parties and other key K-12 stakeholders, the dividing line arising from the question of funding runs between all the K-12 parties and stakeholders on the one hand and the provincial government on the other. This is understandable. The focus of K-12 parties and stakeholders is the success of that system and the standard of living of those employed in it. The focus of the provincial government is to balance those considerations against a host of other considerations - adequate funding for the health care system, a good highways and transportation system, income support for those unable to support themselves, putting in place a competitive tax and business climate so that British Columbians can sustain a high standard of living, ensuring that the level of taxes paid by British Columbia residents is consistent with their preferences as to how much of their income should be spent on shared objectives through government and how much should be left with them to spend on themselves, and so on.

To state that there is naturally a tension between K-12 parties and stakeholders and the provincial government appears to belabour the obvious. I believe, however, that the root cause of the extraordinary stress in teacher collective bargaining in British Columbia is that we have not adequately thought through the consequences of this tension. We have not understood why that tension has grown over time, and our attempts to structure and restructure teacher collective bargaining have not been adequately informed in this regard.

Because I believe this issue is so fundamental, I "belabour the obvious" in the next section.

V FUNDING PUBLIC EDUCATION IN A DEMOCRACY

Because I believe that there are some fundamental issues to understand here, it is useful to go back to first principles and ask and answer some basic questions that lay at the heart of the public education enterprise:

1. Why do we have public services?
2. How do we decide how much to spend on public services?
3. Do we spend enough on public education in British Columbia?
4. Who is accountable for this?

1 Why Do We Have Public Services?

The answer to this may seem so obvious as to not require a moment's thought. But I believe it is more significant than that. As a society, we choose **not** to provide most goods and services through the public sector. Rather, we leave the decisions as to who will consume what, and who will provide what, to individuals and firms acting out of their own self-interest - i.e. we "leave it to the market". Why do we choose to use the public sector over the private sector for some goods and services?

The answer I like best to this is that we use government to do together what we could not do, or could not do as well, acting individually. Some goods and services would not be provided through the market by the private sector. Some goods and services could be produced by the private sector, but we have decided we would not be happy with the quality, quantity or distribution that the private sector would provide.

Education is one of those services that our society has decided should be provided primarily through the public sector. There are a number of interrelated reasons for this - a belief that a well-educated population benefits society as a whole, a belief that every child deserves as equal an opportunity as possible regardless of his or her parent(s) ability to pay for a high quality education, and a belief in the importance of developing common understandings, values and a shared sense of citizenship.

2 How Do We Decide How Much To Spend On Public Services?

The decision to provide goods and services through the public sector fundamentally changes the way we make quantity, quality and distribution decisions. For goods and services flowing through the private sector, the market makes these decisions. How much of a particular good or service are people willing to purchase at different prices? How much of that good or service are firms willing to supply at different prices? At what price will the two sides of the demand and supply equation equilibrate? And so on.

The decision to use the public sector, however, reflects a fundamental decision not to rely on the market. The decisions become mediated through the democratic political process, rather than through the market. Does the public wish to see a higher level of funding for a particular activity? Is it willing to pay higher taxes to provide that higher level of funding? If not, is it willing to see lower levels of funding for other activities? If it is not willing to pay higher taxes or see lower levels of funding for other activities, is its desire to see higher levels of funding for that activity genuine? Will it vote for or against a party that promises higher/lower levels of funding? Will it vote for or against a party that promises lower/higher levels of taxes? And so on.

While the mechanisms through which these decisions are mediated are fundamentally different (politics versus the market), they still deal with the same basic choice - allocation of resources amongst competing ends. The decision by an individual to buy a new television means less money available for other desired things – say, books. The decision by government to spend more on education means society will have less for something else - say health care, or private purchases because the increase is financed through higher taxes.

It is the job of those elected by the public to use their best judgement as to what the public really wants, make those choices, and be accountable to the public for those choices. If democracy is to operate well, it is the public's job to pay attention to the choices made on its behalf, and to use its voice to let governments know whether it is agreeing or disagreeing with those choices. The conditions required for the democratic process to operate well are discussed below.

3 Do We Spend Enough On Public Education in British Columbia?

The idealized discussion above talks about "the public" as if it is of one mind. Obviously this is not the case. People have widely divergent views about what level of government spending is appropriate and which taxpayers should finance which share of it.

When it comes to one particular part of government spending - say education - it is not possible for any one person to determine what the "correct" level of spending is. Over time, the level of spending will go up or down in response to what the elected government feels to be the public's wishes. If a government gets too far out of line with the public's wishes it stands to be "de-elected" and replaced with a government more aligned with those wishes.

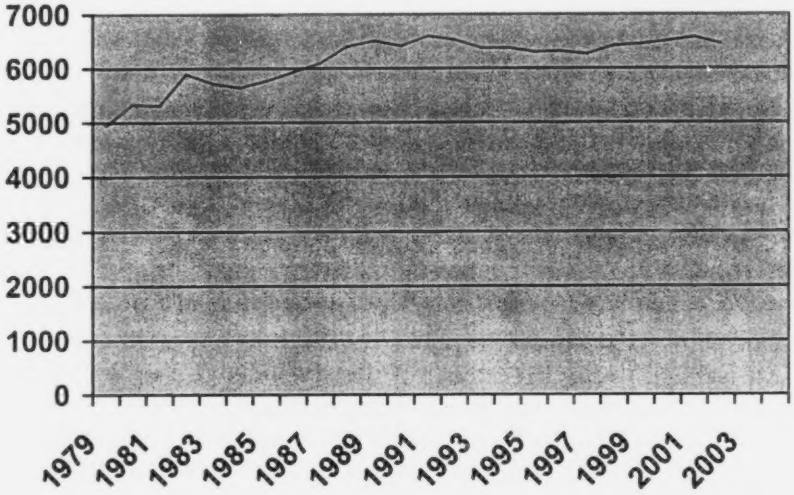
While it is not possible to answer the question posed in this subsection directly, it is possible to provide perspective by looking at the amount we spend in British Columbia relative to a number of comparisons:

- relative to what we have historically spent;
- relative to the overall level of wealth we have in British Columbia to spend on all goods and services; and
- relative to what other jurisdictions spend.

First of all, however, a word of caution. Government spending figures over time and between jurisdictions are always prone to the "apples-to-oranges problem". Accounting definitions of what is included and what is excluded from any particular figure change over time within any one jurisdiction and vary between jurisdictions at any particular time. While I have tried to get data that is as much apples-to-apples as possible, some care should be taken in reading too much into these numbers. It would be prudent to use them collectively to develop an "impressionistic" view of things rather than rely on any one series as "the definitive word".

Figure 1 shows how total school board operating expenditures per student has varied in British Columbia from 1979/80 through 2002/03.[3] These expenditures have been corrected for inflation.

Figure 1- Operating Expenditures Per Student (Jan. 2003$)



Source: Ministry of Education

It is apparent that there are four basic periods captured over that period of time. Up to 1982/83 expenditures per student were on an upward trend. From 1983/84 through 1985/86 expenditures per student were restrained or flat. From 1986/87 through 1991/92 expenditures were again on an upward trend. Finally from 1992/93 through the present, per student expenditures have been essentially flat.

Two observations about the pattern in expenditure per student are can be noted. First of all, the periods of growth or restraint in expenditures are closely correlated with the economic and fiscal situation in British Columbia. Up until 1982 economic growth in British Columbia was quite robust, and the provincial government's budget was in a surplus/small deficit position. In 1982 British Columbia suffered from its worst economic downturn since the 1930s, and the provincial budget moved into a large deficit position. Strong economic growth returned in the 1985-89 period, and the provincial government's budget moved into a surplus position. Since 1990 economic growth has been below historical trend and the provincial government's budget has been in deficit for most of that period.

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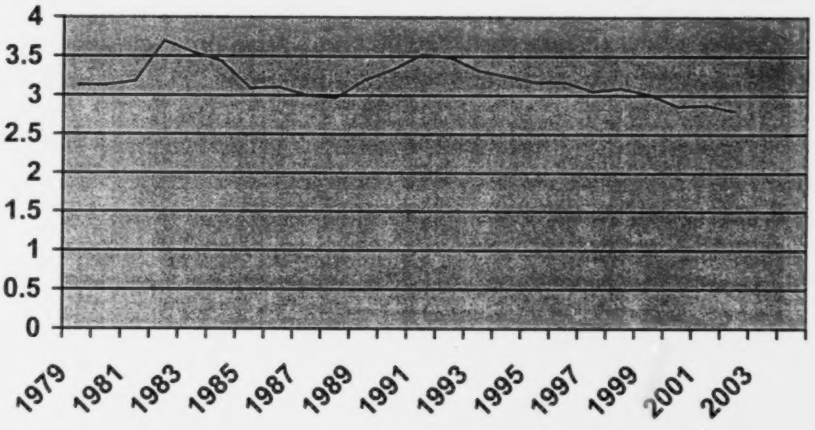
[3] It should be noted that this does not represent the total amount spent on K-12 education – other items such as activities performed directly by the Ministry of Education and financing for school construction are not included in these figures. School board operating expenditures were chosen because it is the most consistent series over time.

Second, the long-run trend in per student expenditure has been up, though there has not been much movement since the early 1990s. Care needs to be taken in drawing conclusions from shorter periods, particularly ones that start at or near a cyclical peak.

Probably the best overall measure of the total income available to a society to allocate amongst purchases of goods and services, both private and public, is the gross domestic product (GDP). GDP measures the market value of all the goods and services produced in a society, net of the cost of intermediate goods used in their production. It corresponds closely to the income earned by individuals and firms in the economy. Expenditures as a percentage of GDP speaks to the relative share of society's income that is being spent on a particular activity.

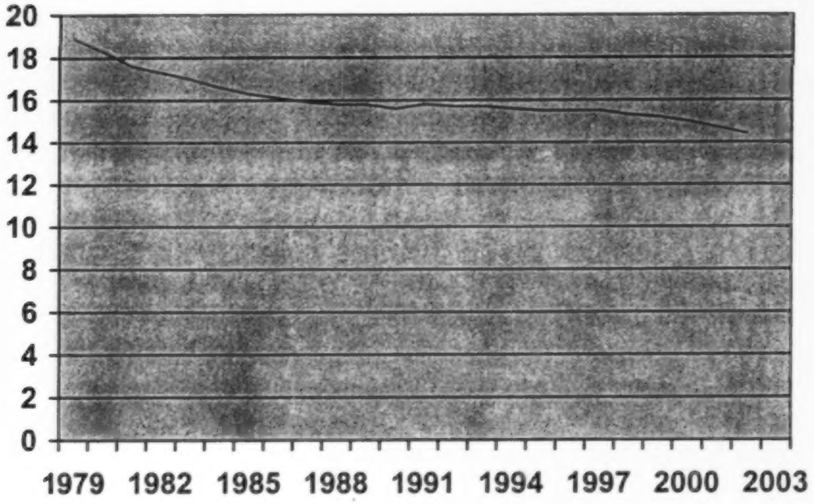
Figure 2 shows school board operating expenditures as a percentage of British Columbia's GDP over the period 1979 through 2002. There may be a slight negative trend over the whole of that period. Over the same period the student population as a share of the total population has declined much more definitively and much more rapidly, as shown in Figure 3.

Figure 2 – Operating Expenditures as a % of GDP



Sources: Ministry of Education, BC STATS

Figure 3 – K-12 Student Population as a % of Total BC Population



Sources: Ministry of Education, BC STATS

While any trend of the expenditure-to-GDP ratio is relatively weak, there are two peaks, one occurring in the early 1980s and the other occurring in the early 1990s. These peaks correspond with the upward spending momentum that developed in the "good times" before the economic slowdown occurred in the early 1980s and 1990s respectively. In both cases this spending momentum was unwound over the next few years by the government of the day. Again, care needs to be taken in drawing conclusions from periods that start at or near a cyclical peak.

The final comparison is what British Columbia spends per student relative to other Canadian provinces. For this comparison the most recent data available is for the 2000/01 school year. Figure 4 compares operating expenditures per student in British Columbia to the provinces for which there is data for 2000/01.[4] In that year, British Columbia expenditures per student were second to Alberta's.

As stated above, none of this can definitively "prove" British Columbia spends too much or too little on K-12 education. Different people, coming from different interests and perspectives will argue that British Columbia spends too little or too much. Furthermore, it says nothing about how effectively the money is spent or how much of it "ends up in the classroom."

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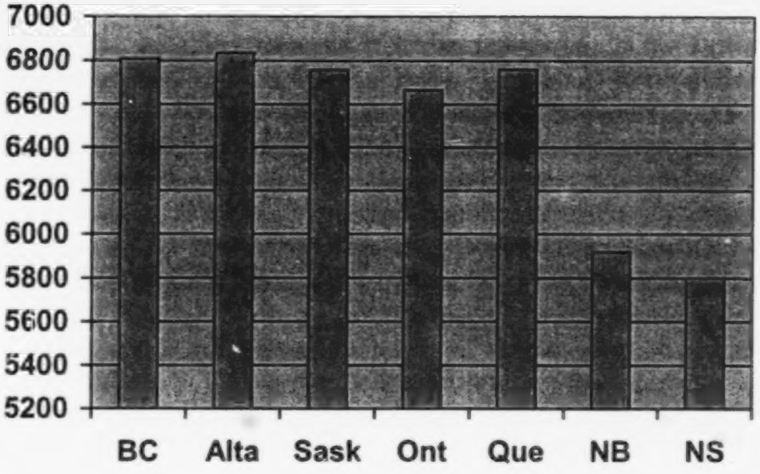
[4] The definition of per student operating expenditure for the interprovincial comparisons is slightly different than for the British Columbia historical series in Figure 1. The priority here is to maintain an "apple-to-apple comparison" with each series – i.e. over time for the historical series and between provinces for the interprovincial comparison.

Figure 4 – Operating Expenditures Per Student (Current $), 2000/01



Source: Inter-Provincial Education Statistics Project

4 Who Is Accountable for This?

The answer to whether public education is appropriately funded or not is ultimately a political question and it will be settled in the political arena along the lines outlined above.

In the elementary "Civics 101" discussion above, reference was made to the conditions required in order for the democratic political process to work well. Stated succinctly, the primary condition is that the public needs to be able to "follow the money". The public needs to be able to hold accountable the government that is ultimately responsible for determining the level of funding provided for any particular public service. There are two elements to this accountability. One is the question of how much funding is provided. The other, just as important, is how that funding is paid for. Were taxes raised or were levels of funding to other public services reduced? This has to be as transparent as possible in order for the democratic political process to work as well as possible.

When the public education system was established in Canada in the nineteenth century the conditions for well-functioning democratic accountability were in place. The primary financing vehicle for school boards was the local property tax. The scale of school districts tended to be quite small. A large percentage of households had children in the school system at any one point in time. The costs and benefits of higher or lower funding for K-12 education were readily understandable and were debated in the local community. The accountability "line of sight" was short and worked well.

Over the past century, however, these conditions have been eroded. The scale of school districts has grown. A much smaller percentage of households have children in the school system at any one point of time. Most fundamental, however, is that the financing of the K-12 system is now provided almost exclusively by the provincial government. This shifting of financing to the higher level has occurred incrementally. School districts were amalgamated to provide a more even tax base for school boards. The provincial government began providing significant funding to equalize the financial capacity of school districts – British Columbia society wanted to see children receive essentially the same educational opportunity regardless of whether they lived in "rich" districts or "poor" districts. The provincial government began rebating a portion of school property taxes paid to homeowners. The ability of school boards to levy discretionary taxes on non-residential property was taken away. Finally, the ability of school boards to levy discretionary taxes on residential property without resorting to referenda was taken away.

The reasons for this shifting from the local to the provincial were complex. It can be generally understood in the context of society's changing values and the evolution of the overall public sector. This is not to say the shift could not be reversed, though this is an issue that is far beyond my terms of reference for this review. The basic point here is that, for whatever reasons, the shift has occurred. In terms of the basic accountability question, what this means is that when the public follows the money for the funding of the K-12 system, it ends up at the provincial government.

5 Implications for Collective Bargaining

Now juxtapose this shift with the history of teacher collective bargaining in British Columbia. It would be an exaggeration to say that teacher collective bargaining is exclusively about the level of funding for the K-12 system. It is a fact, however, that the issues that have been negotiated at the bargaining table – e.g. compensation, preparation time, class size, class composition, etc. – are the largest drivers of costs in that system. Unless there is alignment between the structure of collective bargaining and the accountability for financing the K-12 system, it is extremely unlikely that there will be satisfactory results at the bargaining table.

Indeed, my belief is that the main reason that the history of teacher collective bargaining has been so unhappy in this province is that the structure of that bargaining has consistently lagged behind the evolution of the accountability for financing of the sector. When full collective bargaining at the local level - with the right to strike - began in 1987, the provincial government was already providing more than half of school board operating funding. Then discretionary taxation authority was taken away from school boards. The move to province-wide bargaining in 1994 can be understood as an attempt to realign with this reality. With the benefit of hindsight, however, it did not get the alignment right.

The BCSTA submission focussed on this when it stated:

> "BCSTA has as its first policy on accountability that: **Responsibility, accountability and authority should reside in the same place.** Our sense is

> that trustees' major concern about the way that the present process has functioned is that it has violated this principle." [emphasis in the original]

In retrospect, it is not surprising that the current structure has led to frustration amongst all the parties.

In consideration of all of this, one of my major recommendations is that the terms of reference direct the commission to pay special attention to the need for alignment between any proposed bargaining structure and the accountability for financing the K-12 sector.

6 What I Am Not Saying

Because there are a number of sensitive issues connected to all of this, I believe it is important to make it clear what I am **not** saying. First of all, nothing in what I have written above should be taken to imply that there is no longer an important role for school boards. Certainly the role of school boards has evolved over time, and they are not currently responsible for determining funding levels. But there remains a fundamental need for the public to have a strong voice in how the schools operate in their community. What is needed is greater clarity as to what the school boards are, and are not, accountable for to their local publics.

I am also not saying school boards should have no role in collective bargaining. It is important that trustees be part of the collective bargaining process. There must, however, be an appropriate alignment of responsibility, accountability and authority.

Finally, I am not saying that a return to local bargaining is not open for consideration. As we have seen, one of the major parties – the BCTF – argues in favour of this. What I am saying is that, if it is decided that such a move is in British Columbia's interest, it will require a significant restructuring in how the K-12 system is financed if we are not to repeat the frustrations of the past. We would need to create a system where the public understands that the primary accountability for the benefits **and** costs of funding for the K-12 system rest with school boards. I leave the question of whether such a change should be an option to the commission.

VI COLLECTIVE BARGAINING IN THE EDUCATION SECTOR

In the previous section I took some time to examine how the dynamics of democratic decision making surrounding funding of public education should inform the terms of reference of the commission. Because the decisions to appropriate to, and allocate resources within, the public sector are mediated through the political process, particular attention needs to be paid to accountability for that decision-making. Stated simply, there are different dynamics in the public sector than in the private sector which require specific consideration.

After having read the different perspectives of the key parties and stakeholders, and having had face-to-face meetings with several of them, I have concluded that a similar consideration of the implications of the differences between the public and private sector within the specific context of collective bargaining would be useful.

The approach again will be to go back to first principles and ask some basic questions:

1. Why does society support collective bargaining?
2. What is different about collective bargaining in the public sector?
3. What is special about education?

1 Why Does Society Support Collective Bargaining?

Why does society accept a process that is essentially adversarial, can create great stress within the workplace and, through strikes or lockouts, can impose great economic harm and inconvenience not only on the parties directly involved, but on the public at large? To paraphrase Churchill: because it is the worst possible system, except for all the others. It is the institution that we have created over the past hundred years or so that best redresses the asymmetry of bargaining power that can exist between the employer and an individual employee, gives the employee a "voice" in the operations of the organization and, if properly channelled, can actually promote the alignment of interests between the employer and employee. While there are costs to everything that comes with this institution, society has decided that the costs of doing without it – in terms of unfairness and conflict channelled in more harmful directions – would be greater.

This is not to say that there are not conflicting considerations at play here. Labour law has evolved over the decades, and continues to evolve, to reflect the ongoing struggle to get the balance between the conflicting considerations right. Governments of different persuasions have different notions of what that right balance is. What is noteworthy, however, is that all governments, whether of the "left" or the "right", understand that it is essentially an exercise in balance. A system that is too tilted in favour of one side or the other, or ignores the interests of the broader public, will lose legitimacy and will cease being an institution that society supports.

2 What is Different About Collective Bargaining in the Public Sector?

It has been argued often, and in many different jurisdictions, that there is inherently a more naturally balanced collective bargaining situation in the private sector than in the public sector. BCPSEA summarized this argument in one of its discussion papers:

> "The underlying dynamics of collective bargaining and dispute resolution are different in the public and private sectors. In the private sector there is a dimension to decision making and costs of agreement and disagreement that is largely absent in the public sector. Further, it can be argued that a natural or inherent structural limit on bargaining and disputes exists in the private sector. Collective bargaining occurs within the context of the marketplace with competition and the ability of a business's clients to go elsewhere should a business be unable to provide products and services as a result of a strike or lockout. The marketplace structure creates a limit on the terms a union can expect to achieve and the manner it uses to achieve them.
>
> In contrast, the public sector has so such structural limits that are equivalent. Where the government is the monopoly provider of a service there is typically no substitute for that service. No other organization or competitor can take the business over in the event the government cannot provide the service. Arguably, the absence of the marketplace as a limiting structural feature of public sector collective bargaining makes the settlement of agreements quite different and in some case more difficult that private sector agreements."[5]

This argument has been used, in one form or another, to justify different collective bargaining regimes, limits on the right to strike, and, ultimately recourse to legislated settlements. This argument is amplified when the particular public good or service being provided is deemed to be "essential".

There is, of course, another side to the argument. It is argued that the right to collective bargaining and to strike is a right in a democratic society, that the possibility of a strike/lockout is the incentive to reach a settlement at the bargaining table, and that other dispute settlement options (e.g. arbitration, legislated settlements) undermine the collective bargaining process. To echo the point from the previous subsection – limiting the right to strike does not come without costs.

Society's decision to provide a good or service through the public sector, particularly as a monopoly, as opposed to the private sector means the primary decision criteria become political. In the private sector, management and labour ultimately share a common interest in a viable enterprise in a competitive environment. If the enterprise is not successful, both management and labour stand to lose their jobs and the firm's investors stand to lose their capital. In the public sector, management and labour would benefit from general public approval of the way the "enterprise" is run, but the dynamic if the enterprise is not successful is generally quite different. Rather than "bury their differences" so both sides can survive in the economic marketplace, management and labour are more likely to heighten their differences and take their respective arguments to the public in order to survive in the "political marketplace".

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[5] BCPSEA discussion paper, April 2001, p.13.

3 What is Special about Education?

This general issue seems to be amplified in the context of public education. The history of teacher collective bargaining provides ample evidence of this. Until 1987 full collective bargaining with the right to strike was not available to teachers. Education has in the past, as it is now, been deemed "essential" under the Labour Relations Code, or predecessor acts. Governments of both the "left" and the "right" have felt compelled to legislate ends to strike and/or impose settlements.

The point here is not whether the government of the day was right or wrong to put these restrictions on free collective bargaining. It is that there is a political dimension to collective bargaining in the K-12 sector that transcends partisan considerations – governments have felt that they had to intervene to limit work stoppages.

It also should be noted that other jurisdictions across Canada, and, indeed, around the world grapple with this issue. No one "model" is emerging as "the" way to go.[6] Some jurisdictions restrict the right to strike. Some jurisdictions have put in place bargaining processes and/or dispute settlement procedures specifically tailored to the public education system. Some jurisdictions have very little differentiation between general labour relations law and that applying to the public education system.[7]

What specifically is it about education that makes it "special" in this regard? There are three arguments that seem to motivate the particular treatment of teacher collective bargaining. The first one is the general importance attached to education by our society. There is a general consensus that a high quality public education system is one of, if not the most, important enterprises run by government. It is an investment in society's future, in equalizing opportunity and in developing a sense of shared citizenship. If it is this important, it does not take much of a stretch to deem it "essential", at least in the rhetorical sense.

The second argument, related to the first, is what may be called the "lost time argument." There is only a limited amount of time in a school year for children to benefit from school time. If a significant part of the year is lost to a strike, that time is "lost forever." As one stakeholder put it to me: "Kids are not two-by-fours. After a lumber mill goes on strike, the lost production can be made up in a relatively short period of time. The equivalent is not possible after a school strike." It is suggested that this argument applies particularly strongly to students who are near to graduation and are competing for places in the post-secondary education system or who are about to join the world of work.

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[6] BCPSEA has researched different models used in Canadian provinces and some international jurisdictions. A summary of this research is provided in its January 2003 discussion paper.

[7] Most recently, the province of Alberta received a report from a Commission on Learning, which, among other recommendations, has recommended significant changes to the structure and scope of collective bargaining.

The third argument, and somewhat distinct from the first two, is that over the past thirty years schools have taken on a custodial function that many parents and society as a whole have come to rely on. The proportion of families headed by single parents, or where both parents work, has increased significantly over the past few decades. In these families, there may be no one at home to look after younger children in the event of a school strike. This poses a hardship on parents – they are forced to find alternative arrangements (possibly costly to the parents), stay home and lose income, or live with the anxiety that their children may not be adequately looked after. In addition, the public school system has become an integral part of the delivery of important support services to some children and families.

This all contributes to the political pressure felt by governments to bring an end to school strikes. A former Minister of Education succinctly captured the political reality of this:

> "Government of all political stripes know that a strike or lockout in the school system cannot be allowed to go on very long. There are nearly 600,000 students in public schools, and when a labour dispute closes the schools, their parents – the voters – get very angry. A shutdown of ten days, or maybe two weeks, is about all that parents or politicians are prepared to tolerate."[8]

This political reality has had unfortunate implications for the general health of relationships within the K-12 sector. There is a plausible argument that it is the constant legislative intervention that has prevented the development of healthier, mature relationships between the parties.

I come to no normative conclusions about the implications of this for collective bargaining. I merely suggest that this political reality should inform the commission's considerations. It will be up to the commission to make a judgement about its normative significance.

In making any judgement in this regard, I would think the commission would want to extensively review the different approaches used in other jurisdictions. Do some approaches seem to promote more harmonious relationships within the public education system? Would such approaches be adaptable to the particular circumstances and history in British Columbia? In the end, the model adopted in British Columbia will have to fit the realities here, but the issues are similar across the world where collective bargaining is the norm. On the basis of the preliminary review I undertook for this report, it appears that there may be relevant models to learn from in North America, Europe and elsewhere. The commission should investigate these models, and have a full engagement with the parties and key stakeholders to assess whether some elements could be adapted to the situation here.

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[8] Paul Ramsay, column in the Prince George Free Press, September 25, 2003. In the interests of full disclosure, I should point out that I was Mr Ramsay's Deputy Minister for a short period of time in 1996-97.

VII RECOMMENDATIONS

I now turn to my recommendations for proceeding with the commission. I will lay out my recommendations in whole, and then provide some discussion as to why I have made the particular recommendations I have and also, in one key area, why I have left something out of my recommendations.

I make recommendations in four key areas:

- terms of reference for the commission;
- review of Section 5 of the Education Services Collective Agreeement Act;
- composition of the commission;
- preparation for expiration of the current collective agreement.

1 Recommendations

Terms of Reference for the Commission

The Commission will:

(1) inquire into the structures, practices and procedures for collective bargaining by the employers' association, school boards and the BCTF;

(2) review structures, practices and procedures used for teacher collective bargaining in other jurisdictions within Canada and elsewhere in the world;

(3) propose options for improved teacher collective bargaining in British Columbia. The elements of each option must include:

(a) the definition of the bargaining relationship:

(i) the geographic definition of bargaining agents (i.e. provincial, regional or local);
(ii) governance (i.e. who is at the table? how do they bargain? who sets the bargaining mandate?) of the employer bargaining agent(s); and
(iii) whether there should be different "tiers" of bargaining (e.g. some issues at the provincial level, some issues at the regional or local levels);

(b) the school financing and accountability system that would be aligned with the proposed structure for the employer bargaining agent in any single option;

(c) the process for facilitating the achievement of a negotiated collective agreement at the bargaining table;

(d) the procedure(s) to be followed in the event of an impasse at the bargaining table, including facilitative measures such as mediation and a mechanism for objective reporting to the public on the issues behind the impasse;

(e) the constraints, if any, to be placed on the right to strike or lockout in the event of an impasse at the bargaining table;

(f) what, if any, dispute settlement mechanism would be prescribed as an alternative to strike/lockouts.

In considering and proposing options, the Commission must balance the following factors:

(1) the public's interest in minimizing disruptions in the provision of education programs to students;

(2) the right of employees to be fairly compensated for their services;

(3) the value of maintaining and enhancing a positive atmosphere at all levels of the school system (i.e. classroom, school, school district and provincial);

(4) the value of a well-functioning collective bargaining system with appropriate incentives and pressures to encourage settlements at the bargaining table;

(5) the value of effective, efficient and expeditious collective bargaining and dispute settlement;

(6) the views of school boards, the BCTF, the employers association, the provincial government and other key stakeholders in the public education system;

(7) any other factor that the commission considers relevant or that the Minister may direct.

Review of Section 5 of the Education Services Collective Agreement Act

Section 5 of the Education Services Collective Agreement Act should be reviewed to determine if it would restrict the ability of the commission to act under the recommended terms of reference. If it is determined that Section 5 would restrict the commission, the Act should be amended appropriately.

Composition of the Commission

The Minister should appoint one person to the commission after consultation with the BCSTA, BCTF and BCPSEA.

Preparation for the Expiry of the Current Collective Agreement

The Minister should consult with the BCSTA, BCTF and BCPSEA to determine what to do in the context of the June 2004 expiry of the current agreement and the scheduled upcoming bargaining.

2 Discussion

Terms of Reference

The terms of reference I have recommended takes Section 5 of the Education Services Collective Agreement Act as its starting point. I do not believe the recommended terms of reference are inconsistent with Section 5, but merely make explicit some of the factors that I have concluded are important to take into account in light of my consultations with the key parties and stakeholders, and my own analysis of history.

Inclusion of (3)(b) under what the commission will do is, I believe, fundamental in light of the discussion in Section V above. If careful consideration is not made of the need to align responsibility, authority and accountability, then I fear it is unlikely that any changes we make will significantly improve things.

Inclusion of items 3(c) through 3(f) are to allow for considerations of the issues discussed in Section VI above and to allow for the consideration of whether the approach to collective bargaining and dispute settlement should be specifically tailored to the unique circumstances of the public education system. The inclusion of a mechanism for objective reporting in item 3(d) is to allow for a reinforcement of accountability to the public.

The list of factors which the Commission must take into account reflects, I believe, a reasonably comprehensive listing of the conflicting objectives in structuring teacher collective bargaining. I state "conflicting", and suggest the commission should "balance" the factors after due consideration. The discussion in Section IV about the dividing lines between the key parties, and the discussion in Section VI about the unavoidable political dimension to collective bargaining in the education sector lead me to conclude that there is no room for categorical positions that "this interest trumps that right", or visa versa, if we hope to move forward towards an improved teacher collective bargaining situation. Decision making in the public sector inevitably requires balancing interests and rights, and it is advisable to be forthright about this. My intention here is to be permissive rather than prescriptive – I believe the commission should be free to recommend within a broad range of alternatives.

It is important to discuss what has been left out of the terms of reference. In particular, there is one key omission that may raise eyebrows. I have not recommended that the commission examine scope of bargaining issues. As discussed above in Section IV, this is a dividing issue between key parties and stakeholders, and most of the submissions suggested the "what is to be bargained" question is a key issue. I am aware that, left unresolved, this question can be the "elephant under the table". Nonetheless, I have concluded that now is not the time to tackle this issue head on. There are three related reasons why I have come to this conclusion.

First of all, I am concerned that even the more limited terms of reference I am recommending will pose a significant challenge for the commission. Directing us toward a better structure, set of processes and dispute settlement is no small task. I believe adding scope issues to this list could well be the proverbial straw on the camel's back.

Secondly, I have concluded that the wide gap in views amongst the parties on scope issues- i.e. what is a legitimate issue concerning working conditions as opposed to an issue which properly belongs in the domain of "education policy" – is more a symptom than a cause of the unhealthy or immature relationships amongst the parties. If we can foster healthier, mature relationships, I believe the gap will begin to narrow. Hence I believe the priority should be on fixing structures and process, because that is the first step in improving the relationships.

Thirdly, history has shown that, over time, the parties find a way to discuss and negotiate issues, regardless of whether legislation and regulation technically say they should or should not. Better, I think, to let this evolve naturally than to have a potentially divisive fight right now, and then try and constrain negotiations within the procrustean bed that results.

In recommending that the commission stay away from scope issues, there may appear to be a bit of a contradiction with the direction to consider whether there should be different "tiers" of bargaining. Such consideration will involve asking what should be bargained by whom – which might be taken to lead to the scope issue. What I have in mind in this context, however, is more a focus on clarifying where responsibility is best located than on the bigger "what is to be bargained" question.

Review of Section 5 of the Education Services Collective Agreement Act

In its submission the BCTF argued that:

> "the terms of reference enunciated in 5(2)(a)(i-iii) [of ESCA] can only serve to validate and extend the existing system where the rights of one party are constrained by a reduced scope of bargaining and a limited right to strike."

In my discussion above I suggested that the question of scope be "parked" for the time being. In doing so I make no judgement about whether either the scope of bargaining before January 2002 or after January 2002 is "valid", merely that, in my opinion, it would not be productive at this time to take on that question.

In terms of the right to strike issue, I find myself sympathetic up to a point with the BCTF's concerns. If the commission's terms of reference were to unduly depreciate the value of collective bargaining, of achieving settlements at the bargaining table, and the role that the right to strike or lockout can have in promoting this, then the results of the commission could be unfairly slanted. On the other hand, as I explained above, I do not believe that any one right can categorically trump all other interests and rights in the context of public education. The commission must be free to consider the balance amongst these conflicting rights and interests.

While I believe the list of factors I have suggested in my terms of reference may appear more balanced than those in Section 5 of ESCA, I believe it is not inconsistent with that Section. It is important, however, to confirm this. Accordingly, I recommend that the minister obtain a quick legal opinion as to whether the current wording of Section 5 would invalidate the recommended terms of reference that I am proposing. If the opinion is that this would be the case, then I recommend that Section 5 of ESCA should be amended appropriately.

Composition of the Commission

With one exception, the submissions I received were silent on the composition of the commission. The exception was the BCTF. It is useful to reprint the passage in the BCTF submission that is addressed to this question:

> "In June of 1994 [date in original], the report of the "Commission of Inquiry into the Public Service and [the] Public Sector" was made public. Judi Korbin, who headed that commission, observed that:
>
> > "A restructuring process born out of frustration with the current model that does not offer all parties an opportunity for meaningful input is not a guarantee for success. Finding a collective bargaining system that responds to the needs of the parties necessarily means including all of the parties in its formation."
>
> "Mindful of Korbin's comments regarding the need to have all parties meaningfully involved, we recommend that the intended commission established under Section 5 of ESCA be comprised of the following:
>
> - One person named by the BCSTA;
> - One person named by the BCTF;
> - A third person familiar with the K-12 system including human resource issues and collective bargaining agreed to by the two parties.

> "A commission composed as we have recommended would enjoy the confidence of employers and employees alike. To the degree that it is possible, the commission should be free to operate beyond the direct control of government."

While I agree with the passage cited from the Korbin Commission, I have concluded, after due consideration, that the BCTF prescription would not provide us with the desired result. There are two major reasons I have come to this conclusion.

The first has to do with the complexity of the issues to be balanced. As discussed in Section IV, there are dividing lines not just between the BCTF and employers (as represented by school boards), but between all the K-12 parties and stakeholders on the one hand and the provincial taxpayer (as represented by the provincial government) on the other. It is unlikely that a commission that gives explicit voice to parties on either side of the first dividing line, but no voice to the party on one side of the second dividing line will get the balance right. The structure proposed by the BCTF would silence the voice of the party that represents the people who currently finance the system – the government that is accountable to the British Columbia public and taxpayers.

I agree that the commission needs to have considerable autonomy from the provincial government, and needs to be viewed by all parties as fair and objective. But it seems to take that principle a bit too far to establish a commission that gives explicit voice to the BCTF, explicit voice to the BCSTA, and removes the voicebox of the financier of the enterprise.

In Section V I discussed the need for the public to be able to follow the money if democracy is to function well in determining the levels of funding for public services. It is not clear to me that this need would receive due consideration from a commission composed in the way the BCTF recommends.

The second reason I do not believe the proposed structure would work is because of the current entrenched positions of key parties and stakeholders. The suggested composition would create a situation with a strong probability of minority reports unless the parties show a greater ability to compromise than they have for the past eight years.

Judi Korbin's basic admonishment is correct – all parties will have to have meaningful input. Certainly the commission will have to engage extensively with the parties, and truly listen to each party's perspective on the issues. But if the commission is to be fair, objective and capable of taking a fresh look for solutions, it must have a level of independence and disinterestedness, not just with respect to the provincial government, but with respect to all parties.

For these reasons, I have concluded that the best opportunity for a commission that will come up with suggestions that will genuinely improve the situation is a one- person commission. Of course it is important that the parties have comfort that the person chosen is fair, objective and has the right knowledge and skills for the task. Ideally that person should inspire the trust and confidence of all key parties, which is why I have recommended that the Minister consult with the BCTF, BCSTA and BCPSEA in an effort to come up with a mutually acceptable person.

Preparation for the Expiry of the Current Agreement

On the surface, it may seem paradoxical that I recommend the minister consult with the parties to determine what to do in the context of the expiry of the current agreement. Everything I have reported indicates that the parties believe it is extremely unlikely that a collective agreement can be reached without major changes to the existing structure, and it would be useless to even consider trying before those changes are in place.

There is, however, a question of timing. The BCTF stated in their submission:

> "While the BCTF accepts the need for change, the decision to establish a commission of review in September of 2003 can hardly be considered timely. …The Federation does not accept that collective bargaining should be postponed or curtailed in the event the commission is still functioning on June 30, 2004."

Other parties and stakeholders raised questions about what should be done if the commission process and subsequent changes were to carry on through June 2004.

I am optimistic that a one-person commission charged with the terms of reference I am recommending, and set in motion relatively soon, could have a report to the Minister by early next fall. This may seem like a long time, but I have suggested in Section VI above that the commission cast its net widely in seeing whether there are useful lessons to be learned from other parts of the world. I have also just stated above that it is essential the commission have a full engagement with the parties regarding possible options. This will all take time.

Even after the commission has handed in its report, my experience in government tells me that it will take some time to translate that report into a new, hopefully improved, structure. The Minister will probably want to have further consultations about the options proposed by the commission. Legislation will be required, which will take time and may require more consultation. Establishment of new bargaining structures will take time to get up and running.

Given these timelines, and the concerns expressed, I recommend the Minister consult with the parties to determine what to do in the context of the expiry of the current agreement in June 2004.

VIII CONCLUDING COMMENTS

One of the risks in submitting a report like this is that it may leave an excessively negative image of British Columbia's public school system. I was asked to examine the state of teacher collective bargaining in British Columbia. I found significant problems, and have reported them frankly. But that should not be taken to mean I found significant problems with our public school system.

In fact, I believe, overall, we have quite a good public school system in this province. My evidence here is a combination of the objective and the subjective. At the objective level, British Columbia tends to show relatively well within Canada in interprovincial comparisons of student performance. Canada tends to show relatively well in international comparisons. When British Columbia is identifiable as a participant in international assessments, it does well, and does better than Canada as a whole. At the subjective level, I have a child in the system and get the opportunity to see how well served she is by that system.

This is not to say the system cannot be improved. But we should be viewing the exercise as improving an already good system, not fixing a fundamentally flawed system.

This optimistic scenario is, however, at risk. I talked in Section IV above about the magic that happens in our schools, and how many educators are concerned that the dysfunctional state of collective bargaining is putting that magic at risk. I share that concern. It is my sincere hope that the parties and key stakeholders will become fully engaged with the commission in its efforts to address this very real risk.

A

Appendix A – Section 5 of the Education Services Collective Agreement Act

Review of collective bargaining structures, practices and procedures

5 (1) The minister may appoint a commission, consisting of one or more persons, to do the following:

- (a) inquire into the structures, practices and procedures for collective bargaining by the employers' association, school boards and the BCTF;
- (b) make recommendations, after taking into consideration the factors referred to in subsection (2), with a view to improving those structures, practices and procedures;
- (c) report the recommendations to the minister within the time set by the minister.

(2) The commission must consider the following factors:

- (a) the public interest in stable industrial relations in the public school system and a bargaining environment that
  - (i) reduces the potential for disruption in the provision of educational programs to students,
  - (ii) does not interfere with any student's access to a quality education, and
  - (iii) results in expeditious settlement of disputes;
- (b) the need for effective and efficient structures, practices and procedures for collective bargaining by the employers' association, school boards and the BCTF;
- (c) the views of the employers' association, school boards and the BCTF on how to achieve effective and efficient structures, practices and procedures referred to in paragraph (b);
- (d) any other factor that the commission considers relevant or that the minister may direct.

(3) The commission may not recommend the expiry or extinguishment of the collective agreement constituted under this Act before the expiry date set out in that collective agreement.

(4) For the purposes of an inquiry under this section, a person appointed to the commission has the protection, privileges and powers of a commissioner under sections 12, 15 and 16 of the *Inquiry Act.*

(5) A person appointed to the commission may be paid remuneration and expenses set by the minister.

B

Appendix B – Submissions from Parties and Key Stakeholders

British Columbia Public School Employers' Association

British Columbia School Trustees' Association

British Columbia Teachers' Federation

British Columbia Confederation of Parent Advisory Councils

British Columbia School Superintendents' Association and British Columbia School District Secretary-Treasurer's Association (joint submission)

British Columbia Principals' and Vice-Principals' Association

British Columbia Public School Employers' Association

Backgrounder

British Columbia
Public School Employers'
Association

September 18, 2003

Teacher Collective Bargaining Structure: A Historical Perspective and Considerations

The labour relations system in the British Columbia K-12 public education sector has been under pressure since it was created in the late 1980s. To varying degrees, one or the other of the central players in the system — bargaining agents, teachers, trustees, government, parents — have been dissatisfied with the process or the outcomes of bargaining, whether local or provincial. Legislative intervention and structural change have become commonplace.

As with most bargaining structures, the manner by which terms and conditions of employment for teachers in BC are determined has evolved over time. Different bargaining structures have emerged, each for reasons specific to the time of development. The regional structures for support staff bargaining in the 1970s and 1980s, and the employers' desire in the early 1990s to have something other than local bargaining for teachers were both products of the bargaining environment at the time.

Teacher Collective Bargaining in BC: Exploring Alternatives, Assessing Options (BCPSEA, January 2003) describes the historical events in considerable detail and identifies the following milestones:

- Pre 1987: The evolution from unilaterally employer-determined terms and conditions of employment and negotiated salary and bonus agreements with binding arbitration in the event of an impasse to learning and working conditions agreements.
- 1987: Organization as a trade union under labour relations legislation
- 1987–1994: Local school board-local teacher association (union) bargaining
- 1994–present: Provincial bargaining between the BCTF and BCPSEA.

Conceptual Framework

For the purposes of discussion the concept of a balance between two objectives has been adopted. Specifically, policy makers must balance two objectives when developing structures and processes that regulate public sector collective bargaining:

- Allow the union and the employer the freedom to pursue their own objectives through collective bargaining while,

- Limiting the impacts borne by the larger society in terms of industrial conflict and limiting the consequences resulting from out of line or precedent setting settlements.

When you review the legislative record between 1987 and today, certain themes emerge that provide an indication how far policy makers have been prepared to go in emphasizing one objective over the other. An inquiry into the structure, practices and procedures must address the question of balance if the chosen structure is to be effective and efficient.

Over the past twenty years, successive provincial governments have, through public policy, changed the structure and nature of K-12 public education human resource practices. A review of the legislative changes reveals two themes that give evidence of how governments have attempted to balance the two often competing objectives we have identified:

- Industrial stability: limiting the impacts — financial and non financial — of industrial conflict, and
- Cost control through structural re-organization: limiting consequences resulting from out of line or precedent setting settlements and costs associated with resolving collective bargaining disputes.

Industrial Stability

As a matter of public policy in BC, unionized employees in the K-12 sector have the right to bargain collectively subject to limitations to bargaining scope in the *School Act*, and are covered by the prevailing labour legislation. Historically, governments have chosen to minimize the effects of job action in the sector either of two ways:

- Adoption of the "controlled strike" model through the designation of certain services as essential.
- Ad hoc legislative intervention at the time of job action or when job action is contemplated, with a process to conclude a collective agreement.

In view of the labour disputes that occurred since teachers were granted full collective bargaining rights in 1987, the public, and as a result the provincial government, has little appetite for disruption to public schools as evidenced by the following legislative initiatives.

Date	Legislation	Focus	Hansard
1993	Bill 31 – *Educational Programs Continuation Act, 1993*	Disruption	The purpose of this bill is to support collective bargaining where it is working and to fix it where it is broken. This bill puts students and teachers back in the classroom in Vancouver and serves notice to those districts still bargaining that it is time to conclude their negotiations expeditiously. We have reached a critical time in the school year in the Vancouver School District. For those students facing grade 12 provincial examinations and for all students coming to the end of their school year, it's time to get back into the classroom. Collective bargaining in Vancouver has collapsed.

Date	Legislation	Focus	Hansard
1996	Bill 21 – *Education and Health Collective Bargaining Assistance Act, 1996*	Disruption	This bill deals with any collective bargaining dispute involving boards of school trustees, employer members of the Health Employers' Association of B.C. and employer members of the Post-Secondary Employers' Association of British Columbia, where collective bargaining has proceeded to the point of an industrial inquiry commission or a mediator being appointed under the *Labour Relations Code*, and that individual has made recommendations.

Date	Legislation	Focus	Hansard
1998	Bill 39 – *Public Education Collective Agreement Act, 1998*	Disruption	This agreement, which a strong majority of British Columbia teachers have endorsed, brings an investment of $200 million into our schools in the next three years. It provides lower provincial class sizes for students in kindergarten-to-grade-3, giving them more support and attention in the early years when they need it most. This is a good agreement for our children, and teachers have given up pay increases for two years in exchange for these investments in classrooms….Once passed, the Public Education Collective Agreement Act makes the agreement negotiated by government and the teachers' union legal and binding as of July 1, 1998, when the current agreement expires….I was deeply disappointed by the trustees' rejection of that agreement. It is clear to me that trustees and teachers will not return to bargaining, let alone reach a better agreement for our children.

Date	Legislation	Focus	Hansard
2001	Bill 18 – *Skills Development and Labour Statutes Amendment Act* Amended the *Labour Relations Code* to include education as an 'essential service'	Labour Disruption	This bill fulfils our campaign commitment of putting students first….The bill does this by including the provision of educational programs to students and eligible children under the *School Act*, under section 72. Thus, if a labour dispute threatens the delivery of education programs, the Labour Relations Board will have the authority to designate services that would need to be maintained if their disruption would pose an immediate and serious threat to the delivery of educational programs.

Date	Legislation	Focus	Hansard
2001	Bill 27 – *Education Services Collective Agreement Act*	Disruption	This bill settles the teachers' dispute and provides a collective agreement between the parties. It also provides for the appointment of a commission to review the structures, practices and procedures for collective bargaining in the education sector. We are taking this action because this government puts students first, along with the teachers of this province.

Cost Control Through Structural Re-organization

It must be recognized that governments have an interest in the process and outcomes of public sector collective bargaining. Fiscal pressures often force governments to adopt policies that allow for the ability to maintain, reduce or control expenditures. Over the past twenty years, provincial governments have altered the environment within which collective bargaining occurs. Examples include:

- On June 7, 1994 the government passed Bill 52, *Public Education Labour Relations Act*, altering the structure of teacher collective bargaining. The changes were made in to provide a more balanced bargaining structure allowing for greater industrial stability and improved cost-effectiveness.

- As per section 176 of the *School Act*, the Minister of Education passed an Order in Council — enacted July 25, 1996 and effective December 2, 1996 — to redefine school district boundaries and reduce the number of school boards.

Date	Legislation	Focus	Hansard
1993	Bill 78 – *Public Sector Employers Act, 1993* Arising from the Korbin Commission recommendations	Structure, Monetary	This act represents the lynchpin that the commission recommends as integral to achieving government objectives in human resource management. These objectives are: to control compensation costs in the public sector; to assist in the coordination of collective bargaining within and between sectors of the broad public sector; to introduce a mechanism that will deal with administrative costs, particularly executive compensation; and to ensure that government deals effectively with wage equity in the public sector. The new *Public Sector Employers Act* provides an important mechanism for the government to be able to influence the expenditure of its resources by and through public bodies. The bill will provide for the coordination of human resources and labour relations issues across the broad public sector, consistent with the cost-effective delivery of services in those sectors.

Date	Legislation	Focus	Hansard
1994	Bill 52 – *Public Education Labour Relations Act, 1994* Amended the teacher collective bargaining structure	Bargaining Structure, Monetary	Bill 52 has three purposes: to improve collective bargaining practices and procedures in the public school system; to establish a two-tiered provincial system of collective bargaining; and, through these measures, to promote positive working relationships in the public school system. The bill will improve cost-effectiveness for B.C. taxpayers and, more importantly, provide greater long-term stability for students. It creates a more balanced bargaining structure, which will help to alleviate the threat of frequent district-by-district disruptions. The bill will allow the bargainers the opportunity to determine which issues will be provincial and which will be local. It allows for responsiveness to local issues while ensuring that the major cost matters are negotiated provincially. The bill makes the Employers' Association for School Boards, which has been created out of the *Public Sector Employers Act*, the accredited bargaining agent on behalf of school boards, and it recognizes the B.C. Teachers' Federation as the bargaining agent for teachers in all 75 school districts. The bill also recognizes local school boards and local teachers' unions for issues that are agreed to be local bargaining.The right of teachers to strike and of school boards to lockout will continue, but only on a provincial basis. The legislation provides for a transition from the current 75 agreements to one provincial agreement with local issues.

Accountability

Another dominant theme is that of system accountability. With the accountability agenda has come an evolution in the roles and responsibilities of parties in the sector:

- Parents
- School boards
- Bargaining agents
- Government

The provincial government has introduced various legislative initiatives intended to increase accountability in the K-12 public education sector. In addition to those detailed below, the government enacted various amendments to the *School Act* and *Teaching Profession Act*.

Date	Legislation	Focus	Hansard
2001	Bill 8 – *School (Protection of Parent Volunteers) Amendment Act, 2001*	Parents	This act amends the *School Act* to enshrine in legislation the right of parents to volunteer in their children's schools. No one will deny that every parent is an essential part of their children's education. This legislation protects the right of parents to be involved in his or her child's school and assures that this right cannot be bargained away in any collective agreement. At the same time, the *School Amendment Act* makes it clear that the services performed by volunteers will not result in the displacement of an employee. Finally, this act also provides protection for volunteers from legal action in the same way as is normally done for employees of the board.

Date	Legislation	Focus	Hansard
2001	Bill 28 – *Public Education Flexibility and Choice Act, 2001*	Choice	This bill is intended to put students first by giving the local school boards and the college boards the flexibility they need to effectively manage British Columbia's K-to-12 education system and our province's public colleges and institutes. It's about getting collective bargaining in education away from setting education policy and back to focusing on wages and benefits. But most of all, this bill is about putting students first and about making the tough changes that need to be made to continue putting students first in the face of a difficult fiscal environment. This bill, most importantly, enshrines the kindergarten-to-grade-12 class size through legislation in the *School Act*. We'll be one of the few jurisdictions in Canada that does that.

			It's also about giving school boards and college boards more flexibility to manage class sizes and the composition of those classes. It takes the question of how many non-classroom educators — people such as counsellors and librarians — there should be in each school and removes rigid ratios that were imposed by the previous government on school boards. This now allows school boards and individual schools to make their own decisions on how best to meet students' needs. It takes decisions on how the school day and the school year will be structured, removing those from the bargaining table and returning those decisions to local school boards, as well as to college and institute boards so that decisions can be made that are in the best interests of all of our students.

Date	Legislation	Focus	Hansard
2003	Bill 50 – *School Amendment Act, 2003*	Choice	The *School Amendment Act*, 2003, is about giving students a voice on school planning councils, providing more choice for students and their parents and providing all principals with the ability to accrue seniority. It's also about further eliminating red tape for school districts.

Date	Legislation	Focus	Hansard
2003	Bill 51 – *Teaching Profession Amendment Act, 2003*	Accountability	The *Teaching Profession Amendment Act*, 2003, is about increasing public accountability, clarifying the role of the College of Teachers and enhancing its efficiency. The bill will ensure that parents have the right to register complaints about teacher conduct and help increase public confidence in the teaching profession. It will change representation on the College of Teachers governing council to encourage the participation of parents and other educational partners and the public. It will require college members to report professional misconduct of another member to promote professionalism within the teaching profession. It will require the College of Teachers to prepare an annual report to increase financial accountability and to include a report on teacher competence. It will give the college the authority to set standards for teacher certification but not approve how teacher education programs are taught or administered. This bill will permit the college to delegate the power of decision-making to a discipline committee to ensure procedural fairness for all parties.

Terms of Reference Considerations

1. A Comprehensive Review of the Five Structural Components

Any change to the manner in which teachers' terms and conditions of employment are determined must recognize that there are five structural components that comprise the structure. These components are interrelated and must be functionally integrated if an effective system is to emerge.

Review information on teacher collective bargaining structures including the right to organize and bargain collectively, the scope of bargaining, the appropriate bargaining agents and bargaining associations, the appropriateness of the bargaining unit, and the dispute resolution mechanisms.

2. Identify Best Practices in Other Jurisdictions

Collect and analyze information from other jurisdictions both nationally and internationally on teacher collective bargaining structures; identify current or former legislation, best practices and new and emerging processes concerning teacher collective bargaining structures including the right to organize and bargain collectively, the scope of bargaining, the appropriate bargaining agents and bargaining associations, the appropriateness of the bargaining unit, and the dispute resolution mechanisms.

3. Consistent with Section 5 (Bill 27) Identify Structural Options

The five structural components can be arranged in a variety of ways. Section 5 provides for the identification of options consistent with established criteria.

Identify options for collective bargaining structure for teachers based on industrial stability, minimization of disruption of educational programs for students and fostering effective and productive union management relations.

4. Options and Transitional Provisions

The creation of provincial teacher bargaining in 1994 contained no mechanism to transition from 75 local agreements to a provincial agreement save and except for the normal bargaining process. Individual district/teacher local agreements existed as a result of local bargaining between 1987 and 1994. While employers sought to redress what they perceived as the consequences of a power imbalance, the BCTF sought to protect what it had achieved in three rounds of local bargaining. This circumstance served to contribute to negotiation paralysis

Recommend options to the Minister for collective bargaining structures for future teacher collective bargaining with transitional processes as may be required.

British Columbia School Trustees' Association

BCSTA
British Columbia
School Trustees Association — working together for BC students

September 22, 2003

By email: don.wright@gems1.gov.bc.ca

Don Wright
C/o Ministry of Skills, Development and Labour
Box 9052, Stn Prov Govt
Victoria, BC V8W 9E2

Dear Mr. Wright:

Re: Terms of Reference for Review of Teacher Bargaining Structures

I. Background

The factual history of teacher bargaining in BC has been documented elsewhere and will not be repeated here. The role of BCSTA in teacher bargaining prior to BCPSEA is not always understood, particularly the enormous efforts made by BCSTA in developing the school board consensus that lead to the creation of the present structure.

At one time, BCSTA bargained on behalf of school boards, first directly, then through its regional labour relations councils. Later it provided support services by collecting and coordinating information to support board negotiations. Labour relations advisory services and some legal services were added when full scope collective bargaining was introduced. In the early 1990s, the BCSTA Employee Relations Committee undertook a lengthy process of examining options and seeking out consensus among school boards on how local bargaining could be replaced with a better system. This history is summed up in an internal BCSTA memo (attachment 1).

In its 1993 brief to the Commission of Inquiry into the Public Service and Public Sector (the "Korbin Commission"), BCSTA recommended that the province implement a 3 tier process (see attachment 2): local bargaining, province-wide bargaining by a provincial employers' association, and a "pre-contracting" conference involving the Ministry of Education, other ministries as required, school boards and teachers. Certainly school trustees today support a public policy development process that would deal with workplace-related issues in a way separate from collective bargaining. Such a process would clearly need to involve at least the co-governors of the education system: government and school boards. For other elements of public policy, such processes exist – some bilateral involving the co-governors and some multilateral including all education partners.

Following the Korbin Commission report, BCSTA worked on developing a model for a provincial education employer association. This model was presented to the Implementation Working Committee. The preferred option was the "unified model," which had a separate Human

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Resources Council within BCSTA, but shared infrastructure and staff with BCSTA. In current practice, the two associations have carefully avoided duplication of services. BCSTA survived the challenge of creation of another school board association. Separation from the tensions of collective bargaining has enabled BCSTA to focus on assisting boards in supporting student achievement.

The story of teacher bargaining in BC (and probably elsewhere) is that:

- There is no "good" system: systems are more or less successful depending on the criteria for success; they all are stressful to some degree and have potential negative effects on students.
- The more tightly government attempts to control bargaining outcomes, the more rigid and inflexible the process becomes and the less likely it is to lead to a freely negotiated collective agreement. Where incentives to success can only be accessed by bypassing the collective bargaining processes, it is unsurprising that collective bargaining is unsuccessful in achieving a collective agreement.

Since 1993, school boards have directed their concerns about the collective bargaining process to BCPSEA, and BCSTA has supported that direction. Formal resolutions from our governance meetings have been aimed at ensuring that the associations cooperate and do not duplicate services. However school boards have expressed through BCSTA their support for this teacher bargaining review.

II. Terms of Reference

As to the terms of reference of the review, BCSTA makes the following observations:

1. Criteria for Success

Before deciding the answer, it is important to know the question. If the present structure has "failed," what are the criteria for success? Have the expectations changed since 1993?

For example, is success to be measured in terms of degree of harmony (provincially and locally)? Lack of strikes? Low cost settlements? Implementation of provincial policy directives? Full consideration of educational impacts of labour relations and human resource decisions? Impact on student achievement?

In late 1992 and early 1993, through an extensive process of facilitated workshops led by its Employee Relations Committee, BCSTA member school boards evaluated seven possible models for a teacher bargaining structure against six stated criteria as set out in attachment 3. Does government have the same criteria? Have its criteria changed since 1993?

2. Right to Organize and Bargain Collectively

In 1987, BCSTA supported the extension of organization and collective bargaining rights to teachers. We do not believe trustees would see removal of these rights as fair. We suggest that the terms of reference not include these issues.

3. Scope of Bargaining

Any limitations on the scope of bargaining need to be clearly based on principle and on public policy considerations. Confusion arises when government introduces a detailed regulatory scheme to substitute for collective agreement provisions. Legislation is a very blunt instrument in this circumstance. We recommend that your report examine what other processes could be used in this situation.

The "provincial educational policy" tier of decision-making may be helpful in dealing with issues that have been removed from the scope of collective bargaining but in which the province has good grounds for seeking a uniform practice across school districts.

4. Who Bargains With Whom?

BCSTA has as its first policy on accountability, the principle that:

> *Responsibility, accountability and authority should reside in the same place.*

Our sense is that trustees' major concern about the way that the present process has functioned is that it has violated this principle. School boards are accountable for bargaining outcomes even though their authority has been severely limited and government has bypassed their bargaining representatives. Government's objectives in bargaining with teachers have been different from school boards' and the assumption of bargaining by government has not always served the education system well.

School boards have not sought a return to local bargaining: this would not be feasible without a return of taxation authority and school boards have not sought this. A provincial bargaining agent remains necessary.

An examination of the provincial bargaining structure should include an examination of the role of the provincial government and PSEC in teacher bargaining. How have they supported or failed to support "successful" teacher bargaining? What has been the role of government appointees to BCPSEA?

An examination of the government role and the structure of BCPSEA will be difficult issues for BCPSEA to comment on directly and school boards may have to express their views on this through BCSTA.

5. In What Forum Does Bargaining Occur?

Boards in our view perceive the vastness of the provincial table as being a barrier to reaching agreement. We suggest that your review examine the provincial/local split, with a view to returning some items to the local level, along with the resources to deal with them.

As noted above, we suggest that matters that fall outside the scope of bargaining be addressed in other, either new or existing, public policy forums.

6. Dispute Resolution

Many trustees supported the introduction of essential services legislation that has limited the right to strike in the education sector. Interest arbitration is not popular with trustees. Problems with interest arbitration were one of the reasons that school boards supported teachers' acquisition of collective bargaining rights.

School boards are concerned about legislated solutions to bargaining impasse. If teachers expect government intervention to quickly end a strike, a strong mandate to strike is more likely. Strike votes become political statements.

We suggest that the terms of reference include an examination of dispute resolution mechanisms, within the existing essential services framework.

7. Bargaining Climate

In the current climate, government attention to education has been construed by many teachers as extremely negative, almost punitive, in its approach to the teaching profession. School trustees are well aware that strikes are not the worst thing that can happen to a school system. Neither is cost control the most important thing to be accomplished through bargaining. The most important thing, and the reason trustees care about and need to continue to be involved with collective bargaining with teachers, is the effect on the students. Not only bargaining content, but also bargaining processes have an effect on the classroom. A demoralized, de-motivated teaching force IS one of the worst things that can happen and the government needs to be sensitive in this review to avoid this outcome.

Your study should take these factors into account.

I hope you find these comments helpful as you formulate the terms of reference for the review of teacher bargaining.

Yours truly,

Gordon Comeau
President

cc: Ron Christensen, Chair, BC Public School Employers' Association
Neil Worboys, President, BC Teachers' Federation
Chairs, BCSTA member school boards

jac-2257 comeau to wright tchr barg 0309

ATTACHMENT # 1

MEMORANDUM

February 20, 2003

To: Lee Southern

Cc: Susan Job

From: Judith Clark

Re: Revisiting Education Bargaining Structures: Background

You have asked me to assemble the background on BCSTA's involvement in the question of teacher bargaining structures. Note that the resolutions from 1991 and 1992 are "policy", which was understood at the time to mean that it persisted as our position until repealed or perhaps superceded. Policy resolutions did not expire by effluxion of time like normal resolutions.

I have started in 1991 not because that was the beginning (there were previous resolutions and debates) but because it started us firmly down the provincial bargaining road.

Documents not in the library are from my files.

AGM 1991 Res. #21	BCSTA policy: the current system of local teacher bargaining is unsatisfactory.
AGM 1991 Res. #24	The Board of Directors initiate a process towards achieving a better teacher bargaining system, and the process involve a collaborative effort of consultation involving the Ministry of Education, BCTF and BCSTA.
June 1991	BCSTA brief: Achieving a Better Bargaining System (revision of earlier brief): guiding principles, structures, process, relationships analytical framework.
Jan 92-Jan 93	Joint process with BCTF: Joint Exploration of a Cooperative Package on Teacher Bargaining: 9 joint enterprises which the parties might undertake to improve current bargaining system.
March 1992	Establishment of Korbin Commission (Commission of Inquiry into the Public Service and the Public Sector): to inquire into human resource management issues in the broad public sector in BC.

AGM 1992 Res. #17	BCSTA policy: BCSTA supports some form of bargaining of collective agreement with teachers on a province-wide basis.
October 1992	BCSTA Teacher Bargaining Survey for October PC: document Teacher Bargaining Experience. PC accepts BCSTA Employee Relations Committee work place: continuation of joint process with BCTF, continuation of information sharing with Korbin Commission, development of BCSTA ability to create bargaining system options.
November 1992	BCSTA workshop manual (Redbook) Issues and Options.
December 1992	Synthesis: Report from Issues and Options.
December 1992	Korbin Interim report.
January 1993	Working Conference to develop BCSTA positions: A Better Way Starting Today; report.
February 1993	BCSTA submission to Korbin report: Focus on the Future (BCSTA library RGT B8 F6 1993): Recommendation for a three-tier strategic framework for effective teacher-board relations; clear enabling legislation and mandatory participation of all BC school boards.
AGM 1993 Res. #17	Explore ways for BCSTA to accommodate new role of bargaining coordination while maintaining primary focus on education.
AGM 1993 Res. #44(a)	Request legislation for mandatory membership in BCSTA.
June 1993	BCSTA Briefing Paper: the Employers' Association: A Process for Development and What It Might Look Like: (1) enhance ER service area of BCSTA, create a human resource management service area; (2) create Human Resource Management Council within BCSTA, including geographical representation of trustees, government reps, management employees (superintendents and secretary-treasurers); (3) maintain four BCSTA strategic direction: education focus, board services, trustees' service and advocacy; (4) enable human resource issues to be dealt within the context of the BCSTA strategic plan.
June 1993	Korbin Commission Final report (2 volumes) (BCSTA library RGT K8 R4 1993) recommends establishment of PSEC and employer associations in each of the public sectors, including K-12 education, to be responsible for coordination of excluded compensation, benefit administration, human resource practices, collective bargaining objectives within respective sectors, fostering consultation with employee representatives and assisting PSEC in carrying out its objectives.

	For K-12: recommends review of governance and administration, including roles of trustees and administrators and existing SD boundaries. Acknowledges loss of public confidence in the present bargaining arrangements between school districts and teachers, recommends immediate creation of employers' association.
July 1993	Public Sector Employers Act establishes PSEC, 6 public sector employers associations.
July 1993	Issues and Options: BCSTA discussion paper on the formation of K-12 employers' association, prepared by BCSTA Employee Relations Committee.
August 1993	Appointment of Implementation Working Committee (Lynn Smith, chair) to make recommendation for establishment of employers' association for the public school sector: IWC includes BCSTA representatives.
November 25, 1993	BCSTA position paper submitted to the IWC: "The Unified Option"; What do we want? (see attachments)
December 15, 1993	Lynn Smith Report to Minister of Education (JVG I3 K1 1993) makes recommendations on major structural issues, terms of reference, appointment of initial board.
March 10, 1994	BC government announces intention to establish two-tiered province-wide teacher bargaining, establishment of separate education employers association.
April 1, 1994	BCSTA Discussion and resource paper on Education Employers' Association and Two-Tier Teacher Bargaining includes BCSTA proposal for constitution and bylaws March 22, 1994.
June 1994	Public Education Labour Relations Act: BCPSEA is the accredited bargaining agent in two-tier bargaining structure.
May-June 1994	BCPSEA commences operations; 5 BCSTA staff transfer to BCPSEA and BCSTA disbands its employee relations service and Employee Relations Committee.

ATTACHMENT # 2

From 'Focus on The Future', Brief to Commission of Inquiry into the Public Service and Public Sector (Korbin Commission) BCSTA Feb. 1993.

A STRATEGIC FRAMEWORK FOR EFFECTIVE TEACHER-BOARD RELATIONS IN B.C. PUBLIC EDUCATION

FORUM	PARTNERS	MANDATES	PROCESSES
Ministry of Education's provincial precontracting conference.	Ministry of Education and other ministries as required. School boards. Teachers.	Education policy & regulation of major working/learning conditions. Education funding.	* Principled consultation and resolution prior to commencement of collective bargaining.
School boards & teachers' provincial contracting table.	School boards. Teachers.	Written and legally enforceable contracts on terms and conditions of employment which have a predominantly provincial impact and are not governed by regulation.	* Principled collective bargaining.
		Development, implementation, and maintenance of joint enterprises in support of public education.	* Principled consultation.
School board & teachers' local contracting table.	School board. Teachers.	Written and legally enforceable contracts on terms and conditions of employment which have a predominantly local impact and are not governed by provincial contracting or regulation.	* Principled collective bargaining.
		Development, implementation, and maintenance of joint enterprises in support of local education delivery and of the persons responsible for that delivery.	* Principled consultation.

* "Principled" means an "interest-based" approach which is driven by the "principle" of maintaining a focus on education for students.

ATTACHMENT # 3

From "Synthesis. Structure, Relationships, Processes"
BCSTA Employee Relations Committee, January 1993.

PART C - RESULTS

Section 7: Notes on the Interpretation of the Criteria

During the workshop discussions and through their written representations, participants clarified how they were interpreting the criteria. The more common points are indicated below.

A GENERAL NOTE ON RELATIVE AND ABSOLUTE.

Respondents and workshop participants were asked to determine a **relative** ranking of options on the basis of whether the options were **relatively better or worse** at satisfying a particular criterion. Respondents and participants were not expected to determine whether or not any particular option **absolutely** satisfied any criterion.

Accordingly, the cumulative results do not purport to identify examples of perfection. Rather they identify areas where further examination and development are most likely to be fruitful.

CRITERION A: Enrichment of the educational experience for students

This is a very broad criterion and tends to overlap into the others. Logically it could have been placed last as a summative criterion. However, it seemed symbolically appropriate to place it at the head of the list as a reminder of the ultimate purpose of the education enterprise and its constituent parts, including the collective bargaining system.

This criterion focuses on the likely impact of each bargaining system option at the classroom level. Workshop discussions and written feedback identified several considerations including: strike frequency and duration; conflict resolution modelling for learners; locus of conflict; effective human resources allocation; and, effective material resources allocation.

CRITERION B: Sensitivity to community values and educational priorities

This criterion focuses on the likely impact of each bargaining system option on the community's ability to have its own particular values and educational priorities reflected in the delivery of education.

Several considerations emerged, including: acknowledgement that there are truly different and equally valid realities; reconciliation of logical expectations and accumulated experience with respect to the various options; balancing personal experience with some aggregate assessment of provincewide experience; and, the appropriate scope of community (immediate, regional, provincial).

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CRITERION C: Contribution to power-balanced and cooperative relationships

Behind this criterion is an acceptance of the argument that the probability of achieving and sustaining a cooperative relationship is proportional to the degree to which power is in equal balance (it being assumed that, at least in the long run, the parties will act rationally).

Accordingly, discussion centred on the relative impact that the options were expected to have on the balance of power between board negotiators and teacher negotiators.

CRITERION D: Impact on cost and duration of the bargaining process

On this criterion, participants evaluated the likely impact of the various options on the process costs and the time span of collective bargaining activity.

Discussion included: cost of specialized staff and consultants; opportunity cost of board and union educators involved in the process; travel and expenses; complexity of structures and processes; and, communications and administrative logistics.

CRITERION E: Articulation of funding authority with expenditure authority

On this criterion the underlying issue is fiscal accountability. More specifically it addresses the linkages and sensitivities between: responsibilities arising out of expenditure decisions taken at the collective bargaining table; and, responsibilities arising out of taxation and distribution decisions taken to fund collective bargaining mandates and/or outcomes.

Discussion included: pros and cons of direct provincial government representation at the bargaining table; locus and extent of taxation authority; administrative accountability; political accountability; determination of appropriate political constituencies; and, considerations for school board/ministry of education cogovernance.

CRITERION F: Durability for promotion of long-term planning and maturation

This criterion speaks to the probable survival rates of the various options in the medium to long term (it being assumed that any change is likely to be met with resistance in the immediate term). Rather than only comparing longevity in the options' home jurisdictions, assessments were made as to the degree of long-term acceptability (durability) in the event that the option was implemented in British Columbia.

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Discussions included: distinguishing among structural, procedural, and relational features as contributing factors to a system's durability; impact of B.C. political history; impact of B.C. labour relations climate and trust levels; general evolutionary trends in employee relations culture; attitudes to change; intensity of strategic responses from key players; the degree to which the extent of change is impacted by hindsight on the one hand and foresight on the other hand; and generally, the relative importance of maturation as a factor in durability.

British Columbia Teachers' Federation
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Delivered by Hand

September 26, 2003

Don Wright
PO Box 9525
STN PROV GOVT
Victoria, BC
V8W 9C3

Dear Mr. Wright:

SUBJECT: Bill 27 Section 5—Education Services Collective Agreement Act—Review of Collective Bargaining Structures, Practices and Procedures *(ESCA)*

In your meeting with representatives of the BCTF on September 11, 2003 you asked that our organization provide you with background material ("off the shelf") dealing with collective bargaining in the K-12 sector together with any historical perspective we may have regarding that same topic. As well, you invited our submission as you formulate recommendations to the minister concerning the terms of reference and composition of the commission provided for in Section 5 of *ESCA*.

We forwarded material in support of the first of your requests earlier. The Federation will provide an historical overview of collective bargaining to your office on Monday, September 29.

We are pleased to respond, in this letter, to your final request of us concerning the commission.

On January 28, 2002, Bill 27 the *Education Services Collective Agreement Act*, imposed a legislated settlement upon public school teachers and school districts. Section 5 of *ESCA* provided, in part, as follows:

> 5 (1) The minister may appoint a commission, consisting of one or more persons, to do the following:
> (a) inquire into the structures, practices and procedures for collective bargaining by the employers' association, school boards and the BCTF;
> (b) make recommendations, after taking into consideration the factors referred to in subsection (2), with a view to improving those structures, practices and procedures;
> (c) report the recommendations to the minister within the time set by the minister.

...2

The BCTF agrees that there is a need to change the existing structures that govern teacher bargaining. As our supporting materials will describe, the present scheme is inherently flawed; no further proof of this assertion may be required than to recall that since 1995 the provincial parties have been unable to conclude a negotiated collective agreement at the table. Government, in successive rounds and for a variety of reasons, has seen fit to intervene in the bargaining process. The most recent and draconian of such interventions occurred in January of 2002 with the passage of Bill 28 the *Public Education Flexibility and Choice Act* (*PEFCA*). As you will know, the legislation struck down provisions in the collective agreement governing workload and staffing ratios; provisions that had been secured, sometimes at great sacrifice to teachers, in the period of full scope local bargaining. At the same time, *PEFCA* eliminated ten local agreements in school districts that had been amalgamated in 1996 but where multiple agreements had, by agreement of the local parties, continued to operate.

While the BCTF accepts the need for change, the decision to establish a commission of review in September of 2003 can hardly be considered timely. The imposed agreement expires in June of 2004. Already this organization is preparing for the upcoming round, which must commence in March of that year. In our meeting, you indicated that you are unaware of any predetermined deadline for the work of the commission to conclude. The Federation does not accept that collective bargaining should be postponed or curtailed in the event that the commission is still functioning on June 30, 2004. Should that prove to be the case, BCTF will seek to provide further submissions to government that would allow bargaining to proceed as scheduled.

Specific Recommendations:

In June of 1994, the report of the "Commission of Inquiry into the Public Service and Public Sector" was made public. Judi Korbin, who headed that commission, observed that:

> "A restructuring process born out of frustration with the current model that does not offer all parties an opportunity for meaningful input is not a guarantee for success. Finding a collective bargaining system that responds to the needs of the parties necessarily means including all of the parties in its formation."

Recommendation 1:

Mindful of Korbin's comments regarding the need to have all parties meaningfully involved, we recommend that the intended commission established under Section 5 of *ESCA* be comprised of the following:

…3

- One person named by the BCSTA;
- One person named by the BCTF;
- A third person familiar with the K-12 system including human resource issues and collective bargaining agreed to by the two parties.

A commission composed as we have recommended would enjoy the confidence of employers and employees alike. To the degree that it is possible, the commission should be free to operate beyond the direct control of government.

We have not provided for a representative to be named by BCPSEA. That is not simply an error of omission. BCPSEA is the offspring of an earlier legislative coupling, (Bill 78 the *Public Sector Employers Act, PSEA*, and Bill 52 the *Public Education Labour Relations Act, PELRA)* the procreation of which gave rise to the present scheme of bargaining. As such, it is an organization that is answerable to government and is not, in our view, accountable in any meaningful fashion to the public constituency. Government now funds the entire budget of BCPSEA (3.4 million in 2003-2004). The fees previously paid by school districts as a consequence of their compulsory membership are no longer required. In contrast, BCSTA is an organization comprised of individuals who hold office only because they have the confidence of an electorate that is served by the K-12 system.

Recommendation 2:

Section 5 (2) of *ESCA* sets out the factors which the commission "must consider" in its deliberations:

(a) the public interest in stable industrial relations in the public school system and a bargaining environment that:
  (i) reduces the potential for disruption in the provision of education programs to students,
  (ii) does not interfere with any student's access to a quality education, and
  (iii) results in expeditious settlement of disputes;
(b) the need for effective and efficient structures, practices and procedures for collective bargaining by the employers' association, school boards and the BCTF;
(c) the views of the employers' association, school boards and the BCTF on how to achieve effective and efficient structures, practices and procedures referred to in paragraph (b);
(d) any other factor that the commission considers relevant or that the minister may direct.

…4

In our respectful view, the terms of reference enunciated in 5 (2) (a) i-iii can only serve to validate and extend the existing system where the rights of one party are constrained by a reduced scope of bargaining and a limited right to strike. To have any chance at success, a newly-minted bargaining scheme must be supported by both parties who are required to live within its construct. The present system does not have the support of teachers. The Federation urges that your report to the minister include a legislative amendment that would repeal Section 5 (2) (a) i-iii and allow for the commission to recommend any bargaining structure that is based upon full, fair, and free collective bargaining rights.

Of necessity, such a structure would allow for the following elements:

- Ability (authority) to conclude a collective agreement;
- Bargaining styles that contribute to a negotiated settlement;
- Resources sufficient to meet bargaining outcomes;
- Employer structures that are publicly accountable;
- Respect for the role of trustees and local community decision making.

The foregoing elements are those endorsed by the membership of the BCTF through its Representative Assembly in 2003.

We thank you for the opportunity to present and discuss our recommendations and look forward to the establishment of a commission that has our support and confidence.

Yours truly,

Neil Worboys

Neil Worboys
President

NW03Sept26a
NW:jb:utfe/IWA Local 1-3567

HISTORY OF TEACHER COLLECTIVE BARGAINING 1917-2002

ATTACHMENTS FOR LETTER SUBMITTED TO DON WRIGHT

from the

British Columbia
Teachers' Federation

September 2003

Teacher Bargaining 1917-2002

Introduction:

The BCTF has been asked by Mr. Don Wright to offer its views on teacher collective bargaining (K-12) over the last twenty years. What follows is presented in partial fulfillment of that request.

Teachers want to bargain terms and conditions of employment with their employers on a face-to-face basis.

This attitude reflects both the attitudes of teachers today as well as the views of teachers over the last 50 years of our history.

To be effective, a collective bargaining system requires the following key ingredients:

- A respect for the role of trustees and local community decision-making;
- An ability to conclude an agreement;
- Bargaining styles that contribute to the achievement of a negotiated settlement;
- Sufficient resources to meet bargaining outcomes.
- Employer structures that are publicly accountable.

The history of our collective bargaining relationship has shown that unless a bargaining system has integrity that is based on these important principles, it will not gain the confidence of the parties to the relationship or that of the broader public.

What are the lessons of the pre-collective bargaining era?

1. Limits on scope of negotiations did not prevent parties to the relationship from negotiating the full terms and conditions of employment.

   For over 40 years, teachers negotiated beyond the "salary and bonus" scheme that was originally enunciated in the 1937 *School Act*.

   In the late 1960s, teachers in Vancouver, Burnaby, West Vancouver, Coquitlam, Powell River and Surrey negotiated working and learning conditions contracts.

Table 1:

Sample of the Kinds of Provisions Negotiated into Working and Learning Conditions Agreements 1968-1975 Period

PROVISION	DESCRIPTION
1. Terms of Employment	• Appeal process to deal with administration of the contract.
2. Sick Leave: Above that which was set out in the *School Act*	• Set out accumulation and utilization rates for teachers and front-end loading of sick leave for first year teachers.
3. Retirement Gratuity	• Provided for a payout based on years of service.
4. Maternity Leave	• Provided for maternity leave above that provided for in the *Maternity Protection Act*, 1966.
5. Staff Committees	• Established an on-going school committee to deal with school philosophy, staff utilization.
6. Class Size and Teacher Workload	• Established class size limits for kindergarten, any classes, special classes, and average daily pupil load.
7. Library Staffing	• Requirement that every school be served by a qualified librarian.
8. Noon Hour Supervision	• Restriction on the amount of noon hour supervision that a teacher must provide or specification that no member of the association shall be required to perform routine school supervision during the noon hour.
9. Teacher Transfers	• Language setting up voluntary transfers.
10. Detached Duty	• Establishment of a detached duty fund for education conference, seminar, workshop, in-service course or other approved educational activity.
11. Teacher exchange provisions	• Provisions that allow for domestic and foreign exchanges of teachers.
12. Professional Improvement Leave	• Provides for full, partial or unpaid leave for Professional Improvement Leave.

13. Sabbatical Leave	• Provides for the establishment of a Sabbatical Leave Fund in the amount of 1/3 of 1% of the Teachers' Salary.
14. Portability of Sick Leave	• Allows for credit for sick days earned outside of the current school district.

Source: Learning and Working Condition Agreements from some of the districts that entered into those agreements, (1968-1975).

In the early 1980s, employers and teachers freely entered into a range of terms and conditions that were incorporated into local collective agreements or school board policy tied into the collective agreement.

During that period the following improvements were mutually agreed to in contract or tied policy:

Nature of Provision Agreed to in Contract or Tied Policy	**Number of Districts Agreeing to Improve Provisions (in addition to those who already had provisions) (N=75 school districts)**
Increased elementary preparation time	27
Elimination of some or all noon hour supervision	30
Transfer provisions	12
Improved statements on personnel practices	19
Improved provisions for leaves of absence	36
Improved professional development package	42
Paid educational leave	11
Grievance procedure	27

Source: B.C. Teacher Agreements 1980-1985

Conclusion: Local parties entered into these arrangements because, notwithstanding the restricted scope in the *School Act*, both parties saw a need to address issues that confront teachers and students in classrooms.

2. Highly restrictive regimes can serve to frustrate the parties.

In 1919, the government of the day introduced legislative amendments to the *Public Schools Act* providing for consensual arbitration in the settling of teacher salaries. These amendments followed on the heels of a two-day strike of Victoria teachers, the first in the British Empire.

A one-week strike followed by mass resignation occurred in New Westminster in 1921, following the failure of the school board and community to fund the bargaining outcomes related to salary.

Even the introduction of the compulsory arbitration system in 1937 did not bring an end to frustration arising from the limitations on the scope of bargaining.

Mass resignations, "in-dispute tactics," strikes, "work-to-rules" were used throughout the period from the 1920s to the 1980s.

3. Bargaining can only be effective when those responsible for the bargaining have the ability to fund the bargaining outcomes. Bargaining can only be stable when the funding rules and mechanisms can be relied upon over the long term.

The history of teacher bargaining reveals the dynamic and direct relationship between the effectiveness of the bargaining system and the funding of public education. The bargaining system is most effective when those charged with bargaining also have the direct ability to tax.

Traditionally in this province, local school boards have had the autonomy to determine the financial and program needs in their districts, and establish their budget accordingly. That budget was comprised of the basic provincial funding to ensure a uniform minimum standard of education, together with supplementary funding, determined by the school board, to meet the further needs identified in its budget. The supplementary funds were generated by school board access to the local property taxation base.

Local authority to tax beyond a provincially determined funding formula was lost with the introduction of the referenda funding system of the late 1960s, and subsequently restored in the early 1970s. It was suspended by an *Interim Education Finance Act* in 1982; restored in 1987, and again removed in 1990.

Both trustees and teachers have identified the removal of local taxation authority as a major impediment to successful negotiations at the local level.

Conclusion: The greatest periods of tension in the bargaining system occurred when there was no capacity of employer bargainers to deliver on the financial promises made in negotiations and when there were wild swings in government policy that led to uncertainty in the funding system.

4. Public education will always contain an element of conflict. Efforts should be made to localize it and provide negotiators with the authority and responsibility to conclude collective agreements

Public education is established and delivered through the co-operative efforts of teachers and democratically elected officials at the local and provincial level. It is an expression of the norms, values and priorities of the society at large.

The content and processes used in delivering educational programs requires a broad social and political consensus. Establishing that consensus requires an open and public debate.

Bargaining is a subset of that broader debate.

Bargaining history even in the pre-collective bargaining era demonstrated that conflict needs to be managed effectively. Historically, conflict was most effectively managed when local parties were given the tools and the responsibility for resolving the issues. Arbitrary efforts by government to intervene typically pushed the parties farther away from resolving the dispute.

This can be seen in the introduction of the wage and budget control program in the early 1980s. In the spring of 1982, the provincial government enacted the *Interim Education Finance Act* and the *Compensation Stabilization Act*. Ceilings for expenditure were placed on school boards, while arbitrary controls were placed on wages. Teacher bargaining was conducted under a most adverse set of conditions in which virtually all financial control was arrogated to the provincial government.

Under this centralized, iron-fisted control, school boards lost all real power to bargain. Inevitably, the system was tested by teachers who engaged in a broad range of political action and job actions. Aside from the Solidarity strike, work-to-rule activities were undertaken a wide range of locals including major areas of metro as well as Victoria, Qualicum, Sooke, Vancouver Island North, Vancouver, North Peace and Grand Forks.

During this period, legal challenges were the order of the day, including a challenge under the equality provisions of the Charter of Rights and Freedoms.

Conclusion: This history shows that curtailment of rights and arbitrary interventions by government serve to significantly destabilize and undermine the bargaining structure.

5. Curtailment of rights and arbitrary interventions significantly distort bargaining outcomes.

Finally, our bargaining history has demonstrated that unless full collective bargaining rights are provided in a stable predictable political and funding environment, bargaining outcomes become highly distorted.

Federal and provincial interventions including: wage and funding controls, imposed lay-off schemes, and restrictions on the granting of full collective bargaining rights and thwarted the ability of local parties to achieve mutually agreed to bargaining outcomes.

In turn, these interventions serve to severely distort results. This can be seen in the introduction of the federal wage controls in 1975. The legislation came into effect on October 13 in the midst of local teacher bargaining. Those districts and locals which managed to conclude agreements on the eve of the legislation, were able to significantly boost their relative salary standings over those who were not able to conclude an agreement.

This can be seen in comparing Nechako (School District No. 56) and Burns Lake (School District No. 55) salary grids over the period from 1975 to 1980. (Note these districts were amalgamated in 1996 to form Nechako Lakes (School District No. 91.)

Contract/ Salary Grid Category	**Nechako: Category 5 Minimum**	**Burns Lake: Category 5 Minimum**	**Dollar Amount Burns Lake is Behind Nechako**	**Burns Lake Salary as a % of Nechako**
Year				
1975	12,436	12,349	87	99.3%
1976	14,252	13,769	483	96.6%
1977	15,748	14,630	1118	92.9%

While there was some narrowing of the wage gap after 1977, it can be seen that arbitrary government interventions can serve to significantly distort historical compensation relationships. These distortions are not limited to Category 5 minimum of the teacher salary grid. The key in this case is that the distortions occurred in school districts that were political and geographic neighbours. There was no logical basis for the differences other than as a result of a result of arbitrary federal government in establishing ceilings on salary.

Conclusion: This is but one example that illustrates the need for government to take a hands off approach to teacher negotiations. Further examples will be provided should the BCTF decide to make a submission to the commission established under Bill 27.

Teacher Bargaining 1987-1994

Full Collective Bargaining Rights and Local Bargaining:

In May 1987, the Social Credit government enacted Bill 19 the *Industrial Relations Reform Act* and amended the *Labour Code* to provide teachers with the right to strike as an option for dispute resolution and enabled teachers to bargain most terms and conditions of employment. At the same time, the government deregulated longstanding statutory provisions on sick leave, teacher evaluation, and BCTF membership, leaving those issues for the parties to bargain. Virtually every teacher in the province signed up to belong to the BCTF, and in every local members voted to select the right to strike over arbitration. Teachers voted democratically, in huge numbers, with a clear voice. B.C. teachers were the last group of public school teachers in this country to achieve collective bargaining rights.

Some have characterized the three rounds of collective bargaining in this period as being marked by disputes, in which teachers overpowered school boards. This is simplistic and misleading. Decades of restricted rights are described previously in this paper. While some teachers were able to negotiate working and learning conditions contracts, others were rebuffed and in some cases defeated in the courts. The negotiation of these conditions depended totally on a board's willingness to enter into negotiations. Not all boards were willing to negotiate. In many districts, working and learning conditions were contained only in school board policy. The first three rounds of bargaining therefore had to address not only three significant issues that had been deregulated overnight by government, but decades of unmet teacher/student needs such as class size, preparation time, maternity leave, professional development support, and other critical demands. There were, in fact, remarkably few lockouts or strikes.

Teacher strikes in this period were always a last resort, after protracted negotiations had failed to reach an agreement. School boards, many armed with expensive hired lawyers or negotiators, were resistant to collective bargaining. It was difficult for district managers to accept that rules about their behaviour could be negotiated and enforced. In spite of the fact that virtually all teachers signed BCTF membership forms, some school boards even resisted union membership clauses. It is never easy for teachers to leave their classrooms. The public pressure, their professional commitment, and their economic needs are always balanced with their commitment (and need) to improving learning and working conditions, and to improving their economic situation.

Legislative initiatives that significantly impacted on teacher bargaining were a feature of this period and contributed greatly to the protracted nature of bargaining. Immediately after the first round of collective bargaining, the government rewrote the *School Act*. These legislative amendments forced teachers to bargain fundamental issues such as contracting out, hours of work, and employment status. In effect, since most of the rules had been changed, teachers were forced to renegotiate a first contact.

Further legislative changes occurred during the 1990-92 negotiations when local school board fiscal autonomy was removed after only being restored in 1987. Bill 79 was enacted and a retired rear admiral with no labour relations experience , Robert Yanow, was placed in charge of overseeing the positions taken by the parties. What both parties predicted came true: this intervention frustrated, distracted and delayed teacher bargaining until it was scrapped in the spring of 1991.

In 1991, Bill 82, a system of wage controls, was imposed during the middle of the second round of collective bargaining. Half of the districts had reached agreements, and most others were nearing settlement. This bill exacerbated already strained relations, disrupted agreements and their implementation, and placed enormous obstacles in the way of reaching settlements.

Even the third and last round of local bargaining was frustrated by legislation in the form of Regulation 8 (an instructional requirement that ignored the actual provincial school calendar and the negotiated agreements) which interfered with local agreements on school calendar and hours of work.

The parties were able to conclude negotiations on a range of very complicated topics, ranging from layoff and recall to post and fill, from class composition to class size. The parties to teacher bargaining were able to reach agreement on items involving significant management and union rights, including contracting out and professional autonomy–no mean feat. In a work environment that embraces so much professionalism and includes so many professionals, surely it can expected that the working relationship as expressed in the collective agreement, ought not to be one of master/servant, but one of collegiality in which decisions and responsibilities are shared. This was the case with the thousands and thousands of articles negotiated between parties around the province.

Teachers and some employers who were involved in the third round of local bargaining believe that had the government not once again interfered by imposing a provincial bargaining scheme, interruptions in the next round would have been rather minimal in nature. Most of the major issues had been addressed by the local parties, and the parties themselves had established working relationships in regard to collective bargaining and their obligations and responsibilities.

Most school-based administrators actually took comfort in having established rules about topics such as class size because of the clarity produced by such rules. They also knew the benefit of reduced class size, and improved support to the teachers and students. Professional development funding, for example, allowed for staff development initiatives to flourish when teachers could attend courses or workshops. Staffing ratios ensured adequate levels of support for students.

Weighed against all the obstacles outlined above and the decades of unmet needs, local bargaining proceeded remarkably smoothly and with a great deal of accord between the parties. So much so, for example, that much of the language that was bargained between the local parties remains in place today. Granted, some of it is stale, but three rounds of provincial bargaining have not managed to achieve a settlement, let alone provincial standards on most significant issues. Face to face negotiations, at the local level between the parties who are accountable to one another, has been the tried and proven method of working out problems, finding solutions, and putting those answers to print.

Teacher Bargaining 1994-2002

Background: The Korbin Commission–Mandate and Outcomes:

In April of 1992 the NDP government of the day announced the establishment of a "Commission of Inquiry into the Public Service and Public Sector". The commission was charged with the examination of human resource practises within the sector in order that government might "meet the public's demand for services within fiscal limitations." The conduct of negotiations in the public sector, including those in K-12, came under the commission's scrutiny.

Judith Korbin was named to head up the commission. Her final report was released in July of 1993. Submissions from the K-12 employer community had lamented the existing structure of district by district "full scope" bargaining. The major criticisms from the employer's view were essentially two-fold:

- An inability (some would say unwillingness) on the employer's part to compete with the co-ordinated front presented by locals of the BCTF and;
- An inability to fund agreements with teachers once they had been achieved. (Local taxation authority to fund district commitments beyond the basic funding formula provided by government had been removed in 1990).

With respect to the first of these concerns, the employer urged the following upon the commission:

> *The lack of coordination amongst school boards has resulted in situations where Boards have had to trade off economic issues with delivery of service issues. Costs and counter-productivity of the present bargaining system interfere with the effective utilization of resource and breeds ill will as districts compete and draw unfair comparisons with one another.*
>
> *In fact, the present structure of seventy-five (75) parallel sets of negotiations has resulted in a multiplicity of the bargaining process and an increasing degree of confrontation as settlements made in one school district unduly influence negotiations in other school districts.*
> *(BC School District Secretary-Treasurers Association – Submission to the Korbin Commission – September 1992)*
>
> *"As a consequence, it seems that everything is up for grabs". School boards are being whipsawed and cherry-picked around the province."*
> *(Special Report – Public Education and The Public Interest – Brief of the BC Principals' and Vice-Principals' Association to the Korbin Commission – June 1993)*

BCSTA in its submission to Korbin called for a "three-tiered"form of provincial bargaining.

The BCTF, for its part, urged the continuation of full scope bargaining on a district by district basis. In part, the arguments advanced in favor of its continuation went to the need to find "made-at-home solutions" to local issues. Centralization was seen as incapable of responding in a timely or efficient way to such needs. As well, it was noted that the existing scheme for collective bargaining was, in relative terms, still in its infancy. The K-12 sector had only recently acquired full bargaining rights through the enabling amendments to the *Labour Code* in the form of Bill 19, the *Industrial Relations Reform Act.*

The commission's final report was made public in July of 1993. Despite the entreaties of the employer, the commission did not recommend provincial bargaining for teachers. What did emerge from Korbin's recommendations, later in that same month, was legislation in the form of Bill 78 , the *Public Sector Employers' Act* RSBC 1996, C. 384. The essential features of *PSEA* saw the establishment of a Public Sector Employer's Council (PSEC) and mandatory employer membership in six employer associations within the public sector, viz:

- Health
- Social Services
- K-12 Public Education
- Colleges and Institutes
- Universities
- Crown Corporations, Agencies and Commissions

(Part 1 and Regulation - PSEA)

All school boards were now bound to membership in a yet-to-be-formed employers' association for the K-12 sector. (BCPSEA came into being in May of 1994.)

PSEC, chaired by the Minister of Labour, had listed among its legislated functions:

- To set and co-ordinate strategic directions in human resource management and labour relations;
- To advise the government on human resource issues with respect to the public sector; and
- To provide a forum to enable public sector employers to plan solutions to human resource issues.

All of this:

- Consistent with cost efficient and effective delivery of services in the public sector.

(Part 2 - PSEA)

The employer associations were legislatively required to:

- Assist the council in carrying out any objectives and strategic directions established by the council for the employers' association;
- Comply with any strategic direction that is set by the council in the exercise of its functions…that is of general application or applies specifically to that association;
- Comply with any further condition prescribed by the Lieutenant Governor in Council

(Part 3 - PSEA)

Each employer association was required to reserve place settings for PSEC representatives on its board of directors and, in reciprocal fashion, PSEC provided for a member of each association's board to sit as part of the council.

Taken together, these legislatively-fashioned constructs and purposes ensured that government would set the direction and control the outcome of collective bargaining in the public sector. Government and the employers had been effectively joined at birth. Primary direction to PSEC and by extension school districts came from the Treasury Board, with the major concern being cost. (*This was soon evidenced as the Treasury Board, through PSEC, issued the first of two fiscal mandates in April of 1996 which would apply to all public sector employees. Mandate I provided for no compensation in the first twenty months and a 1% maximum for the final 4 months of its term. Mandate II was issued in October of 1997 for the period 1998-2001 Compensation was set at 0% for the first twenty-four months and a maximum of 2% in the final year.)*

While PSEA did not alter the scheme of local bargaining, (agreements with teachers would still be determined on a district by district basis) Bill 78 provided for enforced coordination of the employer community in the K-12 sector. With only minor exceptions, employer co-ordination forced or otherwise, had not been a feature of local bargaining since 1987. Section 11 of *PSEA* empowered the minister, on his/her own motion to accredit employer members of an employer association to act as the bargaining agent for a group of employers named in the accreditation.

BCTF understandably viewed Bill 78 as an unwarranted and unwelcome intrusion into the collective bargaining process.

Two-Tiered Provincial Bargaining

Legislative Scheme:

In June of 1994, the government enacted further legislation that radically altered the shape of bargaining in the K-12 sector. Bill 52 the *Public Education Labour Relations Act* (PELRA), deemed BCPSEA as the bargaining agent for every school district in the province for the purpose of bargaining collectively with a teachers' union or a support staff union. In parallel fashion, PELRA deemed the BCTF as the bargaining agent for all employees in the "bargaining unit"—all teachers in the K-12 public system.

Apart from the hijacking of local bargaining authority, PELRA required that the provincial parties determine a division of issues to be bargained provincially and those to be negotiated locally—"the split of issues". At the same time, certain features of the employment relationship were deemed in s. 7 of PELRA to be provincial in nature and thereby beyond the scope of discussions at the local level.

> 7 (3) All cost provisions, within the meaning set out in subsection (4), are deemed to be Provincial matters.

(4) In subsection (3), "cost provisions" includes all provisions relating to
  - (a) salaries
  - (b) workload, including, without limitation, class size restrictions, *(repealed Jan. 28, 2002 – Bill 28 Public Education Flexibility and Choice Act)* and
  - (c) time worked and paid leave

that affect the cost of the collective agreement.

Immediate Consequences:

For the BCTF and its locals the enactment of Bill 52 meant the loss of bargaining rights for local unions and a severely limited scope of bargaining at the local level. Beyond that, a united front on the employer side of the bargaining ledger posed a very real threat to the continuation of the workload provisions that had been negotiated in three rounds of local bargaining; often at a high price to the local teacher membership.

Structural Flaws:

From the perspective of the BCTF the bargaining structures and employment relationship created by Bills 78 and 52 resulted in serious and fundamental flaws which act as impediments to the "efficient delivery of services" featured prominently in the legislation. Briefly stated, these flaws can be summarized as follows:

- Decisions concerning the delivery of services to the K-12 sector no longer made by the parties responsible for their delivery. Instead, such decisions are made by third parties removed from the school district arena where any decision must be acted upon. This has as a consequence reduced to a significant degree the autonomy and authority of locally elected trustees.

- The employer's approach to bargaining is driven primarily by concerns for cost. Standardization of provisions and resources is seen as a means of significant cost savings. Such an approach has scant regard for the special circumstances that confront individual districts and teacher groups as they attempt to address issues peculiar to their own circumstance.

- The centralization of bargaining creates a serious accountability void. No one from the employer community is responsible for positions advanced or strategies that are adopted. The bargaining agent for school districts can lay the blame for retrograde proposals at the feet of the trustees (its membership) or the government or both. Government can assure anyone who will listen that it has created a system where free collective bargaining has been given free reign. Trustees can point to the 1300 block of Broadway, as they often do, to explain why collective bargaining proceeds as it does.

- The legislative scheme of PELRA is unwieldy. Section 7 (1) of *PELRA* defines the collective agreement as "all Provincial matters and local matters that have been agreed on by the parties." In 1995 this meant that the following had to occur before a collective agreement could be achieved.

  a. Negotiation by the provincial parties of the split of provincial and local issues.
  b. Negotiation by the provincial parties on Provincial issues.
  c. Negotiation by the local parties on local issues.
  d. Negotiation by the provincial parties of unresolved local issues unilaterally referred by either of the local parties pursuant to s. 8 (3) of *PELRA*.

  This would involve some 78 sets of negotiations occurring simultaneously or in different time frames.

  The lack of an effective dispute resolution mechanism for impasse reached at the local level only exacerbates the unwieldy nature of the two-tiered system. The provincial parties, confronted with fixed positions on local matters referred to them, will find it difficult to move from the last-tabled proposals advanced by their counterparts at the local level.

- Because the interests of government are so much in play, negotiations have become politicized to an extent not seen in local bargaining. Since 1995, government has shown little reluctance to enter into the public debate over teacher bargaining with representatives of government commenting in the press and electronic media seemingly at will. This has only served to prolong and further complicate negotiations.

- The assignment of exclusive bargaining agency to the provincial parties has encumbered the speedy resolution of disputes that arise at the local level during the term of the agreement. Grievance handling and resolution have additional layers of bureaucracy and complexity causing protracted delay and frustration for the parties who must live with the problem.

Bargaining History and Outcomes

The Transitional Collective Agreement:

In May of 1995 following an agreement as to the split of issues, the provincial parties undertook to negotiate the first provincial collective agreement. The approach taken by the employer in these discussions had two distinct features. The first was somewhat euphemistically named the "clean slate". BCPSEA adopted the position that all existing provisions, deemed to be provincial matters, were of no force and effect unless they were modified or renewed in a new provincial agreement. The BCTF looked upon the existing agreements as the base upon which improvements should achieved. In the result, BCTF adopted a "no concessions" approach to negotiations and tabled a traditional package of proposals to enhance the provisions of the agreement.

The second feature of the employer's approach was more tactical in its approach. BCPSEA had no specific or written proposals. Instead, the employer's bargaining team attempted to engage the Federation in a second and more tactical feature of negotiations; an "interest-based" approach to collective bargaining. Where the BCTF would table a specific proposal on say class size, the employers' agent would respond with a statement of its "interests" in this regard and invite a dialogue as to how "our mutual interests" might best be served.

It may be that interest-based bargaining has some limited value where the bargaining relationship is well established and the parties have developed a working relationship that is built on trust. This was most certainly not the case as the two provincial parties sat across the provincial table from each other for the first time in 1995.

There was no historical relationship between the parties. At the same time, the Federation was keenly aware of the results of BCPSEA's first bargaining conference held in June of 1994. The employer's interests, if achieved, would have seen the erosion if not the extinction of those areas of the agreement that went to workload and due process. Provisions governing class size, performance assessment and discipline for cause, as well as posting and filling of vacant positions were, in the view of the employer, provisions that should either be seriously modified or stripped entirely from the agreement in favor of employer discretion and flexibility.

BCTF heard the siren song of an interest-based approach to negotiations as an less than seductive invitation to assist the employer in its attempt to dilute existing working and learning conditions for teachers and children. The "no concessions" approach of the Federation was doubly confirmed.

The NDP government of the day, in anticipation of a provincial election, passed legislation that would ensure no disruption in health care or education while the election was underway. (Bill 21- *Education and Health Collective Bargaining Assistance Act*)

Before the election, government representatives brokered a deal in the K-12 sector that rolled over the language of the existing agreements 1992-1994 (95) and provided for modest salary increases during the term of a "Transitional Agreement". Both parties ultimately endorsed the agreement, which also contained a provision for an early resumption of negotiations well before its expiration.

The First Imposed Collective Agreement:

The second round of negotiations saw a change in tactic on the part of the employer but no retreat from its fundamental position that the existing agreement required wholesale change.

BCPSEA tabled a package of written proposals in September of 1997 as did the Federation on behalf of teachers.

The two packages were antipodal in their approach. The employer continued its "clean slate" vision of the agreement. BCTF again held that existing provisions should remain subject to revision through negotiated improvements.

Expressing anger and frustration at the lack of progress at the table, BCPSEA called on the provincial government to intervene in the negotiations in February of 1998. Representatives of PSEC approached the Federation with specific proposals that they felt could form the basis of a settlement acceptable to both parties. Negotiations with government and the BCTF produced an Agreement in Committee (AiC) in April of 1998 which was then presented to both parties for ratification. The AiC contained contractual limits for class size K-3 together with guaranteed staffing ratios for non enrolling teachers such as librarians, counselors, learning assistance teachers and the like. Compensation during the term of the proposed agreement fell within government's Mandate II of 0% 0% 2% over three years.

BCPSEA was not part of the negotiation that led to the AiC. This disenfranchisement was, in part, responsible for the employer's negative reaction to its terms. Trustees, at the urging of BCPSEA, voted overwhelmingly to reject the proposed deal. In July of 1998 the government imposed the settlement as a collective agreement binding the parties through passage of Bill 39 the *Public Education Collective Agreement Act*. The ensuing period thus saw the employer community much embittered. In its view, the imposed agreement served only to exacerbate the loss of employer flexibility and control in the workplace.

The Second Imposed Agreement:

Soon after the Liberals were elected in May of 2001, legislation was enacted to make K-12 education an essential service. Bill 18 the *Skills Development and Labour Statutes Amendment Act* added "the provision of educational programs to students and eligible children under the *School Act"* to Section 72 of the *Labour Code*.

The Liberal government embarked on a program of reductions in spending, with most ministries forced to make cuts in their program budgets. Health and education had their own budgets frozen.

Negotiations towards a new collective agreement began in the spring of 2001. BCTF continued its no concessions approach. For its part, BCPSEA pressed even more vigorously its own agenda to recover "losses" experienced since 1987.

In nine months of meetings, only three issues were decided. Throughout negotiations, the government threatened to intervene especially when the BCTF began a limited form of strike and was prepared to escalate to a withdrawal of program service in an escalated phase of job action. In December of 2001, Stephen Kelleher attempted to facilitate negotiations between the parties.

The increasing threat of government intervention and the corresponding recalcitrance of the employer meant that even his best efforts went for naught.

On January 28, 2002 the legislature passed two pieces of legislation which brought all matters to a halt. Bill 27 the *Education Services Collective Agreement Act* imposed a collective agreement on the parties and provided salary increases on 2.5% in each of three years 2001-2004. Section 4 of the bill also eliminated, effective July 2002, ten local agreements in districts that had been previously amalgamated but where two or more agreements had continued to operate.

Bill 28 the *Public Education Flexibility and Choice Act* moved the employer's bargaining agenda forward with alarming force and effect. The existing agreement was stripped of any provisions concerning class size and/or workload. Those terms and conditions were now added to the s.27 of the *School Act* as being beyond the scope of teacher bargaining.

Somewhat ironically Bill 27 had confirmed that the Legislative Change provision between the parties would become part of the legislated agreement. Bill 28 contained a section which denied access to this same provision to address the impact of the legislation on the class size and workload language of the agreement.

Much has been written and said about the imposition of a second collective agreement. For some in the employer/government community it is simply the legislated expression of an old adage "turnabout is fair play". From the perspective of teachers, January of 2002 was hardly a tit for tat experience. Where imposed conditions in 1998 (the AiC) improved the working conditions for teachers and the learning environment for students, Bills 27 and 28 served only to make those conditions worse.

Bill 27 s. 5—Review of Collective Bargaining Structures, Practices and Procedures:

Government included the potential for such a review as a feature of its January 28 legislative package. Clearly there is a need for change to the present structures. The terms of reference mandated in s. 27 5 (2) appear to teachers to simply extend a government/employer agenda that would see a further diminution of rights and conditions for teachers together with further restrictions on the right to strike.

Unless those terms of reference are modified to allow for a more balanced approach to the review, it is unlikely that the commission's work will bring about the stability in this sector that teachers and the public seek.

British Columbia Confederation of Parent Advisory Councils

BCCPAC

BC CONFEDERATION OF PARENT ADVISORY COUNCILS

Suite 202, 1545 West 8th Avenue, Vancouver, BC V6J 1T5
Tel: (604) 687-4433 Fax: (604) 687-4488 e-mail: bccpac@telus.net

September 25, 2003

Mr. Don Wright
c/o Deputy Minister's Office
Ministry of Skills, Development and Labour
PO Box 9594 Stn Prov Govt
Victoria, BC V8W 9K4

Dear Mr. Wright:

Thank you for your invitation to BCCPAC to make observations and recommendations on the development of the draft terms of reference for the commission to review the structures, practices and procedures for collective bargaining by the employers association, school boards, and the BCTF.

BCCPAC members believe that our students and their learning are very directly affected by current collective bargaining structures, practices and procedures in BC, as well as by what is contained in contract language, and by any changes to contracts. Labour negotiations involve not only the BCTF, but also CUPE and the many other unions represented in our school districts. All these negotiations impact parents, children, our children's educational outcomes, and the proper functioning of our schools. Parents and students are the ones who feel the effects of any kind of disruption of service in our public schools.

The ability of Parent Advisory Councils (PACs) and District Parent Advisory Councils (DPACs) to support schools and student learning will be directly affected by the commission's recommendations, and any resulting legislation. When negotiations are taking place, the atmosphere in our schools is often terrible, as union members, employers and politicians alike use students to further their stand on the issues. Pressure tactics by these groups can create tensions in school climate, which in turn affect the ability of PACs, SPCs, and Student Councils to operate autonomously, effectively and in a truly balanced, respectful, democratic fashion.

With regards to the terms of reference for this commission, BCCPAC would like to make the following recommendations:

1. "Administrative Fairness" principles (www.ombudsman.bc.ca) would support the consideration of advice of parents and the parent voice in the decision-making process. The review should incorporate opportunity for significant input from PACs, DPACs and BCCPAC. We feel that it would be extremely helpful to the commissioners if they were to meet, for example, with the BCCPAC Board of Directors in order to engage in some dialogue around various bargaining issues, as we have seen them unfold over the years. Similarly, it would probably be very instructive for the commission if it were to organize some sessions with PACs and DPACs around the province, to engage in dialogue around some specific collective bargaining questions.

2. The commission should review the *BCCPAC Statement of Policy* and identify all the resolutions which not only directly address collective bargaining issues, but all issues which will be affected by the commission's recommendations. We are attaching, for your reference, a sampling of resolutions extracted from the *BCCPAC Statement of Policy*. The full document, as well as index and tracking, is available on our website at www.bccpac.bc.ca.

3. There are some specific clauses and issues, which cause difficulty for parents and students. For example, the Harassment clause in the collective agreement is often used against parents, with serious legal consequences to the parent. Any clauses dealing with volunteers affect the involvement of parents and the community in our schools.

4. As much as possible the commission should endeavour to analyze the pros and cons of various aspects of collective bargaining in the context of the School Act and Ministry of Education administrative directives. There are currently a number of processes that devolve responsibility for planning and resource allocation to the local schools and SPCs. How will these be affected by changes to province-wide, or district-level contract language?

5. The concept of choice needs to be introduced. The current structure places a large amount of control over hiring practices, grievances, and staff representation in collective agreements. For this reason, all schools and their SPCs are essentially subject to the same constraints, which limit "choice" within the public system, in many cases, to only superficial discussions.

6. The commission needs to definitely consider which items should be within the collective bargaining process, and which items should stay in the realm of public policy. An open debate on this concept would give the public an opportunity to explore and understand the options and their ramifications.

7. The commission needs to have a free hand to look at everything, and to question current status-quo assumptions. There is a lot of information available about changing roles for teacher unions throughout the world. The commission needs to include people who have knowledge and expertise in the alternatives that have been tried elsewhere in order to encourage the consideration of other possibilities. What works, what doesn't work, and what stays the same no matter what you do?

8. The commission needs to analyze the issues arising if membership in the BCTF were to become "optional", What would be the impacts on hiring practices at the school level? How would traditional labour-management issues be handled without creating more difficulty for PACs and SPCs?

9. We hope that the review will be completed before the next round of negotiations begins.

Our members have directed that "BCPSEA receive parent input on contract issues relevant to our children's education," and that "the BCCPAC Board of Directors … continue to advocate on behalf of parents and students in any further public education restructuring discussions." *(Resolutions 1997.3 and 1996.9)*

BCCPAC members are very concerned about how this round of talks will affect our children. Many school communities are still dealing with the results of the last round of bargaining. We need a new approach in collective bargaining because historically the old methods have allowed schools to be arenas to further both the employee's and employer's point of view and students have been used as pawns in the negotiating process. We would like to see a process that does not allow students and PACs to be used in this way. We would like to see a commission that looks for a new way for adults to solve contract issues without affecting the daily operation of schools while they are negotiating.

We appreciate the opportunity to provide suggestions for the terms of reference for this commission, and we look forward to engaging in further discussions with your Ministry during the review itself.

Yours sincerely,

Terri Watson

Terri Watson
President

Attachment – Extracts from BCCPAC *Statement of Policy*

The BCCPAC *Statement of Policy* contains resolutions adopted by our membership at AGMs from 1992 to the present. The following are extracts from that document:

2003.8 Freedom to educate

That BCCPAC urge government to enact legislation that prohibits school districts from entering into collective agreements that restrict the right and ability of districts to contract out for any services other than teaching.

2003.9 Flexibility to direct PAC funds

That BCCPAC urge the Minister of Education to ensure that PAC funds are not encumbered by school district policies or collective agreements when purchasing goods or services.

2003.10 Stronger volunteer language

That BCCPAC urge the government to enact legislation that prohibits collective agreements that require the consent of the employee group for parents or other volunteers to participate in commonly practiced and reasonable volunteer activities at schools.

2003.11 Selection criteria for teachers in special education resource positions

That BCCPAC urge the Ministry of Education, Ministry of Advanced Education, BC School Trustees Association, BC Teachers Federation and the BC College of Teachers to adopt specific selection criteria for teachers in special education resource positions at school and district levels.

2003.13 Funding for legislated increases in teacher salaries and benefits for 2002/2003 and 2003/2004 school years

That BCCPAC appeal to the provincial government to provide the necessary funding to pay for the legislated increases in teacher salaries and benefits for the 2002/2003 and 2003/2004 school years which would otherwise fall to be met by school boards.

2001.5 Class size language

That although parents understand and support small class sizes as being an advantage to children, it is a concern that the current class size language is not continued in the contract past June. The reality of funding available and the looming teacher shortage does not make the balance of small class sizes and the maintaining of other important equities for students attainable. BCCPAC must lobby to ensure that this class size language is not continued.

2000.19 Class size limits, intermediate and secondary

That BCCPAC express to the Ministry of Education, BCPSEA and BCSTA, parents' concerns that strictly limiting class sizes, in the BC Teachers' Collective Agreement, for intermediate and, particularly, secondary schools will cause undue hardship to students and compromise their education.

That BCCPAC lobby the Ministry of Education to increase funding to school districts to allow them to work, with flexibility, on reducing class sizes.

2000.22 Excluding volunteer language from collective agreements

That BCCPAC lobby the Ministry of Education, the BC School Trustees Association and BC School Employers Association, as well as encourage Parent Advisory Councils and District Parent Advisory Councils, to lobby their local school boards to ensure that language regarding volunteers in schools be excluded from collective agreements.

2000.4 Education as essential service

That Resolution 1993.1 be rescinded and replaced with the following: "That BCCPAC lobby the government of BC to amend the Labour Relations Code (Bill 84)), Part 6, Section 72, to include 'education' wherever the phrase 'health, safety, or welfare of residents of British Columbia' is stated."

1999.15 Stabilizing teacher/student class assignments

That BCCPAC lobby the Ministry of Education, the BC Teachers Federation, the BC Public School Employers Association and other educational partners to review policies, contract language and practices to ensure that students are assigned to permanent teachers and programs no later than the end of the first week of school. Future employee group contract language should reflect that the movement of students beyond this date is not permissible; and

That BCCPAC work with partner groups to ensure that all possible measures are taken to ensure staffing levels are in place prior to the start of school in September.

1999.10 Underfunding of education

That BCCPAC call on the provincial government to increase the funding for K-12 education to ensure:

a) All collective agreements negotiated by the province will be fully funded.

b) The costs of legal and labour relations arising from grievances and arbitrations and implementation of remedies to grievances will be fully funded.

c) Each year's per student funding amount is adjusted for inflation.

1998.6 BCTF union local presidents be full-time union

That BCCPAC request of the BCTF and the BCPSEA that teachers elected to the president's position in the local or sub-local union be either paid full-time by the union or moved to a part-time teaching position.

1998.2 Retribution

That BCCPAC promote the development of policy and process to ensure students and parents will be protected from retribution when students or their parents bring forward any concerns to schools or school districts.

1997.3 Parent input to BC Public School Employers Association (BCPSEA)

That the BC Public School Employers Association receive parent input on contract issues relevant to our children's education.

1996.9 Public education restructuring

That the membership direct the BCCPAC Board of Directors to continue to advocate on behalf of parents and students in any further public education restructuring discussions.

1995.3 Multiple teachers in a classroom in one year

That the BC Public School Employers Association remove the clause in the teachers' collective agreement that allows there to be multiple teachers entering and leaving a single classroom throughout the school year.

1995.2 Teachers and noon hour supervision

To ensure that the BC Public School Employers' Association be asked to include supervision by teachers during noon hours in all teacher contracts in BC.

British Columbia School Superintendents' Association and British Columbia School District Secretary-Treasurer's Association (joint submission)

BCSSA British Columbia
School Superintendents' Association
A PROFESSIONAL ASSOCIATION OF SUPERINTENDENTS, ASSISTANT SUPERINTENDENTS & DIRECTORS

VIA FAX

September 25, 2003

Mr. Don Wright
c/o Deputy Minister's Office
Ministry of Skills, Development and Labour
PO Box 9594 STN PROV GOVT
Victoria, BC V8W 9K4

Dear Mr. Wright:

Thank you for the opportunity to respond to your request for input into the development of draft terms of reference for a commission to review the structures, practices and procedures for collective bargaining by the employer's association, school boards, and the British Columbia Teachers' Federation.

On behalf of our associations we believe that there are the following three major themes that need to be considered in developing the terms of reference:

Theme 1: Structure Complexity: Bargaining structure is complex with:

Inter-dependent components

There have been a series of changes to the bargaining structure that have been piecemeal; not a part of a comprehensive review. For example:

- Full scope bargaining in 1987 without recognizing the unique nature of the two negotiating parties. Local school boards and a centrally-organized trade union that bargained ***provincially*** district by district.

- Provincial bargaining in 1994 with no transitional provisions to assist in the transition from 75 local agreements to a master agreement. There was an unrealistic expectation that the normal course of bargaining would result in one agreement.

- Essential services 2001 that served to protract the dispute. The model was based on the health "life and limb" model that was not easily adapted to public education.

- Scope of bargaining 2001. We need to assess the implications for bargaining now that school organization matters are outside the scope of bargaining.

... Page 2

Theme 2: More than One Component:

Each of the elements that comprise the structure must be examined

- Right to bargain -scope (What you bargain?)
- Who does the bargaining?
- Where the bargaining occurs: provincially; regionally; some combination of provincial/regional; locally; some combination of P,L,R.
- What happens if you can't reach an agreement?

Theme 3: Unique History:

Bargaining in the BC K-12 sector has a unique history. The relationship between districts and locals, BCPSEA and the BCTF, and the ability of the parties to negotiate an agreement are products of this history. It is essential that any solution is respectful of the history and that a model from another jurisdiction is not transplanted here as a quick solution. If the model is inconsistent with the history, it is sure to fail.

The terms of reference must permit:

- Identification of the problem the government is trying to solve.
- An examination of the bargaining history.
- A review of other jurisdictions including the reasons why a particular structure exists; identification of best practices.
- The mandate of the bargain: what is to be bargained? This should be defined very clearly. If the provincial government sets public policy, then precisely what is in the bargain – wages, hours, and benefits?
- The dispute resolution process: what is the process if there is no agreement on the contract?
- A review of process and procedures that determine how the bargain will be funded.
- With the current agreement expiring on June 30, 2004, what will the impact of this commission have on starting a new bargain? Will bargaining be put on hold until the completion of the review?

... Page 3

Once again, thank you for the opportunity. Please call if you have any questions, or if we can be of additional assistance.

Yours truly,

Lyle J. Boyce, CGA
President, BCSDSTA

Julie MacRae

Julie MacRae
President, BCSSA

LJB:jr

B.C. Principals' & Vice-Principals' Association

Quality Leadership in Education

30 September 2003

Mr. Don Wright
c/o Deputy Minister's Office
Ministry of Skills, Development and Labour
PO Box 9594, Stn Prov Govt
Victoria, BC V8W 9K4

Dear Don,

Thank you for the opportunity to provide comments on your assignment to develop terms of reference for a commission to review collective bargaining in the public education sector.

The BCPVPA supports the Hon. Graham Bruce's initiative and would be pleased to provide advice to the commission from our perspective. Our members believe that the current bargaining process has not worked for a variety of reasons. The tension and turmoil surrounding the ongoing conflict between the union and the management's agent, the BCPSEA, has been complicated by the involvement of various governments in legislating settlements. This has had a negative impact on the culture of schools that eventually hinders our ability to serve students.

Our Association believes that teachers are entitled to compensation and reasonable benefits that reflect the important work they do. To ensure that these are in place and that the system can function smoothly and effectively, there are three fundamental questions that should be addressed by the commission:

Who should bargain?

Since the government funds the system, and since the cost of personnel is the major budget item, the government must be involved in the bargaining process through an agent of some kind. The government cannot abdicate this responsibility to school districts and be held accountable for their varied negotiation results. This approach created significant problems before the introduction of province-wide bargaining.

What should be bargained?

The scope of the current bargaining process is too broad. This is a fundamental problem that must be resolved. Too many issues have been captured in collective agreements that are properly management rights or matters of public policy

How should disputes be resolved?

They should be resolved in ways that have no impact on students. We need to be creative. The industrial model we currently use should not have been imposed on the public education sector.

We must find other ways to resolve disputes that can create a more positive human resources climate within the system.

The BCPVPA has had a strong interest in these issues for some time. In 1991, it made a presentation to then Minister of Education, Stan Hagen that identified some of these same issues. (I have attached a copy for your information). The Association is willing to be involved again in this process wherever appropriate. Once the commission has been established, we will be prepared to make a presentation based on consultation with our members.

I look forward to discussing our suggestions in more detail.

Yours sincerely,

Bob Lindsay
President

BL:N

British Columbia

Principals' and Vice-Principals' Association

A Brief on Teacher Collective Bargaining

in Response to

The Minister of Education

Presented to

The Honourable Stanley B. Hagen
Minister of Education

September 12, 1991

BCPVPA Response to the Minister Concerning Possible Changes to the Bargaining Process for Teachers in British Columbia

I. Introduction

The B.C. Principals' and Vice-Principals' Association is pleased to respond to the Minister's request to participate in a review of the collective bargaining system for teachers in British Columbia. However, we must state at the outset we have concerns with the process being followed.

The Minister's invitation seems to suggest that a particular alternative to the present system has been selected and we are being asked to suggest how best to make this system work. Whether or not we support the option chosen by the Minister, we do not believe this process will encourage positive participation by all interested parties. On the contrary, it could lead to further conflict and confrontation.

This is an important, complex and sensitive issue which does not lend itself to simple solutions. We respectfully suggest that the Minister consider extending his timeline to permit more reasoned reaction and discussion. This could lead to a more satisfactory outcome - namely a better system of collective bargaining for teachers which will be effective in the longer term.

We suggest the Minister create a task force including ministry staff, representatives of trustees and all professional groups to examine the issues and the initial discussion papers and report back within a reasonably short period of time. We believe that our future advice to the Minister would be refined and improved by face to face discussions with our education partners.

We are aware that this issue must be discussed within a highly volatile political climate. However, we hope that political considerations can be set aside for the benefit of the educational system, particularly our students.

Despite our misgivings with the process, we have attempted to identify issues and concerns with the present system from the perspective of school administrators. Rather than propose simple solutions to complex questions we have attempted to bring forward the basic issues which must be addressed if the current, seriously flawed system is to be improved.

II. The Issues

Our members believe the present bargaining system has had a negative impact on the educational programs of our students. We have a great deal of concern and professional discomfort with any bargaining process in which disputes are resolved at great cost to the students who have no recourse of any kind to protect themselves.

Government, school boards and teachers may argue over the degree of impact on students, the number of days lost per capita, or the comparison with other provinces or countries to justify the process. We believe that no student time should be lost to resolve disputes between those responsible as employers and their employees.

The crux of the matter is that a bargaining system based on the current industrial model has been transposed directly on to a totally different sector of society. It has produced unfortunate results, such as we have described above.

In the "free enterprise" system of full collective bargaining the dispute is between the employer and employee. The forest industry, for example, can raise the price of its products, subject to supply and demand, to meet increased labour costs. This cannot be done in education or other social services. Again we stress, in education, there is a third party involved, the students, who have no power or influence on the process.

A second basic issue for our members is that it is premature to develop or change a system for teacher bargaining before developing commonly accepted answers to three basic questions:

1. Who should bargain?

2. What should be bargained?, and

3. How should disputes be resolved within that process?

Finally, whatever system is in place, it must be allowed to operate free from external intervention. In the past the rules of the process have been changed frequently. This has been counterproductive.

We believe the present system was ill-conceived initially and needs to be modified and improved, through genuine consultation. However the new system, if there is to be one, must be allowed to work and be seen to work by all parties.

III. Who Should Bargain?

As we stated earlier, it appears the Minister has decided to introduce some form of "provincial model". This is a political decision which automatically has an impact on the administration of districts and schools. Before the Minister makes his final decision, may we suggest he address the following deceptively simple questions:

1. Who has actual control over the provision of financial compensation to teachers?

2. Who has control over the cost of providing the working conditions negotiated by teachers?

Given that the remuneration of teachers and other employees accounts for close to 80% of the budget of most school districts, we believe an examination of these questions should lead to a consideration of how education is financed in British Columbia. This in turn will focus attention on the overall governance of the education system. These matters should be debated and resolved before final decisions are made on provincial, regional or local bargaining.

A common shibboleth advises us that "He who pays the piper, calls the tune". At present the payer must negotiate with the piper before knowing how much is available to pay him and in fact appears to have much less negotiating power than the piper - and his friends throughout the province.

At the present time the government appears to have almost total control of school board financing. The Ministry establishes the formulae which generate funds. It sets the timing for announcing the amount of those funds and, in recent announcements, the Minister has indicated a desire to exert control on the allocation of specific funds within school district budgets.

Because of the timing of budget announcements school districts have been forced to negotiate with teachers, and other groups, without knowing their actual budget amounts. In addition to this, the rules of the process have been changed frequently before, during and after the negotiation process. The latest example is Bill 82.

This situation illustrates clearly that there is an incongruity between who has actual power and responsibility to pay the bill and who has negotiated the amount of the bill on behalf of the employer. Who knows what the bill should be? Our Association believes this fundamental dichotomy must be resolved before a position can be taken on whether to continue with the current process, to modify it or to start again with a totally different one, be it provincial, regional or local.

IV. What Should be Bargained?

The two major tasks performed by school administrators are: to provide educational leadership in their schools and communities and to administer those schools efficiently and effectively within the parameters of the School Act and Regulations and under the policies and direction of the school boards.

Since the question of "What should be bargained?" has never been properly addressed it is becoming increasingly difficult for us to perform these major roles.

We contend that the scope of the present bargaining process is too broad. To put it succinctly, it seems just about everything related to the educational process is "up for grabs". This is not conducive to the creation or maintenance of an effective education system, especially one which is undergoing radical change and therefore needs that magical combination of flexibility and stability to succeed.

We are particularly concerned with the erosion of the right to manage which results from this ever widening scope of bargaining. It is becoming almost impossible in some school districts for principals to exert the kind of creative, flexible leadership needed at the school level. Hard line union contracts simply do not lend themselves to the kind of service we should be providing to young people and their parents.

The employer-union bargaining process is designed to deal with compensation to be paid for a task set out by the employer. We believe the current process has gone far beyond issues of compensation such as salary and benefits and has resulted in direct interference in the right to manage within prescribed funding.

For example, matters such as class size, the length of the working day, including preparation time, and the calendar for the school year should not be matters for negotiation. These issues should be addressed more effectively through legislation based on past practice and consultation with all relevant parties. This consultation should include review and revision as circumstances change.

Likewise, matters which properly fall under the duties and responsibilities of the principal according to the School Act and Regulations should not be negotiated. These include items such as the supervision of instruction, curriculum, agenda and length of staff meetings, discipline of students and school records, among others.

These are administrative matters, most of which have been dealt with in a co-operative manner by all the professionals in a school and should not be restricted or eliminated by a union collective agreement. These include items such as flexible timetabling or class organizations, designed to better meet the changing needs of students. This effective co-operation is being negatively affected by the imposition of the industrial union model on the education system of British Columbia.

One further example, and perhaps the most insidious of all, is the so-called "professional autonomy" clause. This clause is being interpreted and used to hamper school administrators in the effective performance of their duties. It is a clear example of an apparent "no cost" item given away by employers, usually in the later stages of bargaining, to obtain a settlement. We suggest there is the potential for serious long-term costs associated with this clause.

This paper is by no means an exhaustive list of items in teacher contracts which cause concern to administrators. We believe those mentioned, and others, should not be part of the negotiation process. Indeed, we contend that some may be in contravention of the School Act and Regulations. It is imperative that the question, "What should be bargained?" be seriously examined as part of a review of the current bargaining process. At the very least, the Ministry should be prepared to enforce its own legislation.

V. How Should Disputes be Resolved?

It is difficult to provide a definitive answer to this question until the previous two have been addressed. The dispute resolution mechanism will depend to a great extent on the bargaining model and the items open for negotiation.

To be consistent with our earlier statements, we would strongly recommend a process which does not interrupt the education program of students. The process must be "at arms length" from government. It should not be inordinately expensive in terms of time and human resources. It should gradually establish an acceptable set of precedents to guide future practice. The ultimate objective would be to minimize confrontation, eliminate disruption and allow teachers, administrators and others to get on with the job of providing the best possible service to our students.

We would add that it is essential that the two parties to this process be on an equal footing. The dice should not be loaded in favour of one side or the other. Moreover, the rules, once established, ought not to change during the process unless by mutual agreement.

VI. Suggested Discussion Guide

In this section we respond to the Minister's Discussion Guide with some caution as it appears to have been designed based on a pre-conceived choice of some kind of provincial model. We have addressed most of the issues already but we will use the discussion guide to focus on some of the issues we may not have addressed previously.

1. Should the strike/lockout option of teacher-school board collective bargaining be replaced with binding arbitration?

   Given our serious desire to avoid the interruption of the educational programs of our students, we would support a system of dispute resolution which does not include the strike/lock-out option. As we have indicated above the dispute resolution mechanism must be independent, efficient and fair to both parties. The process will depend on the negotiation model and the content of the negotiations.

2. Should government bargain teachers' collective agreements directly with teachers' unions or should boards bargain agreements through an accredited employers' association or through a government appointed body?

   As indicated earlier, the participants in the negotiation process will depend on fundamental decisions taken about the governance and funding of education. If governance and funding are to be more centralized, government will play a more direct role. However, we strongly recommend that government does not negotiate directly with teachers. We suggest that negotiations should be conducted by an independent agency acting on behalf of all employers. There are examples in other jurisdictions which could provide models to be adapted to the education system.

3. Should restrictions be placed on the scope of teacher collective bargaining? If yes, what restrictions would you envision?

   There should most definitely be restrictions on the scope of teacher bargaining. We believe we have addressed some of the more important items in part IV.

4. Should bargaining be conducted on a two tier approach where government bargains major cost items and boards bargain low cost local issues?

   A two tier approach is not acceptable because it does not eliminate the potential for massive conflict and disruption to the system. Once clarification has been achieved on which issues are to be regulated, which are to be negotiated and which are to be left to local discretion, a two tier approach becomes redundant.

5. Should there be provisions in a collective agreement for regional differences?

   Once it has been decided who will negotiate and what is to be negotiated, it seems entirely appropriate that there be some flexibility within the process to address regional disparity.

6. What would you suggest would be an appropriate method for boards to be represented in the bargaining process?

We cannot make a recommendation on this issue until the fundamental questions set out above are answered.

VII. Summary and Conclusion

The first two rounds of teacher negotiations have been costly for teachers, school districts and their respective organizations in time, money and human resources. They have been disruptive for students and their parents. The collective agreements which have been negotiated have begun to have a negative impact on the provision of educational services at the school and district level.

It seems reasonable, therefore, to review this process to see if it can be improved. Such a review must involve all the relevant parties and must be carried out through genuine consultation.

However, as we have stated clearly, concerns with the matter of teacher negotiations are inextricably linked to more fundamental issues of governance and financing of education in British Columbia. These issues must be resolved if we are to bring stability and flexibility to the system. Such resolution must include an effective, respectful and professional way for teachers to negotiate their compensation and benefits with the representatives of their employers.

Our Association is willing to be involved in such a process. We believe we have a particular perspective on the provision of service to students which should be heard. We would hope that this paper is only our first opportunity to be involved in a long-term consultative process. These issues are too complex, too sensitive and too important to be decided hurriedly. Simplistic solutions are never simple.

Finally, we hope the issues we have raised and our comments on them have contributed positively to your consideration of these important questions. Satisfactory resolution of these and other matters is vital to the continued health and vitality of our system.

French

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Appendix C – References

British Columbia Public School Employers Association, A Case of First Instance . . . K-12 Public Education as an Essential Service (April 2002).

_____, A Question of Alternatives: Avoiding and Resolving Collective Bargaining Impasses (April 2001).

_____, Teacher Collective Bargaining in BC: Bargaining Scope – Why We Bargain What We Bargain (June 2003).

_____, Teacher Collective Bargaining in BC: Exploring Alternatives, Assessing Options (January 2003).

British Columbia Teachers' Federation, Education Funding: A Brief to the Select Standing Committee on Finance and Government Services (October 2002).

_____, Face to Face: Brief to the Public Personnel Policy Commission (February 1993)

_____, The Steps Leading to Full Bargaining Rights.

Korbin, Judi, The Report of the Commission of Inquiry into the Public Service and the Public Sector, Volume Two, Final Report (June 1993).

Novakowski, Ken, Gaining full bargaining rights (BCTF ezine Archives: May 2000).

_____, So that's the way it happened (BCTF ezine Archives: December 1999).

_____. Teacher rights and benefits: Building on our past (BCTF ezine Archives: October 1999).